BEFORE THE WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

In the Matter of the Petition for Arbitration of an Interconnection Agreement Between MCIMETRO ACCESS TRANSMISSION SERVICES, INC. and GTE NORTHWEST INCORPORATED Pursuant to 47 USC Section 252.	)	DOCKET NO. UT-960338 ARBITRATOR'S REPORT AND DECISION

I. INTRODUCTION

A. Procedural History

On April 3, 1996, MCIMETRO Access Transmission Services, Inc. ("MCI") requested negotiations with GTE Northwest Incorporated ("GTE") for interconnection under the terms of the Telecommunications Act of 1996, Public Law No. 104-104, 101 Stat. 56, *codified at* 47 USC § 151 et seq. (1996)("the Act" or "1996 Act").

On September 10, 1996, MCI timely filed with the Washington Utilities and Transportation Commission ("Commission")[1] and served on GTE a request for arbitration pursuant to 47 USC § 252(b)(1). The matter was designated Docket No. UT-9603338. On October 2, 1996, the Commission entered an Order on Arbitration Procedure establishing certain procedural requirements and on October 9, 1996, the Commission entered an Order appointing the undersigned as arbitrator. GTE timely filed its response to the petition.

A hearing was held before the arbitrator on December 3 and 4, 1996, in the Commission's main hearing room in Olympia, Washington. MCI was represented by Brooks Harlow and Robert Nichols, attorneys at law. GTE was represented by Timothy O'Connell, John B. Williams, and Michael Hill, attorneys at law. Following the hearing, the parties filed final briefs and final or "last best offers" on December 19, 1996 (see following section).

B. The Arbitration Process

In the parlance of judicial administration, this arbitration has proceeded on what has been appropriately dubbed a "rocket docket". The mandated timeline within

[1]In this decision, the WUTC is referred to as the Commission. The Federal Communications Commission is referred to as the FCC.

which to complete this arbitration in compliance with the Act has tested both the patience and the skills of attorneys, witnesses, and Commission Staff. Furthermore, the parties have conducted in excess of 30 arbitrations on a nationwide basis contemporaneous with this proceeding, and numerous of those arbitrations were between these same parties. Under these circumstances, these attorneys and witnesses have earned the respect of this arbitrator by maintaining the highest standards of professional conduct and civility towards each other throughout the proceeding.

The transformation initiated by the Telecommunications Act of 1996 is unprecedented, and the range and complexity of issues present many matters of first impression. This process began in the federal legislature, policies for implementation were developed by the executive branch, and state commissions were delegated the role of resolving disputes between the parties and approving operative agreements.

C. Standards for Arbitration

The Telecommunications Act states that in resolving by arbitration any open issues and imposing conditions upon the parties to the agreement, the state commission is to: (1) ensure that the resolution and conditions meet the requirements of section 251, including the regulations prescribed by the FCC under section 251; (2) establish rates for interconnection services, or network elements according to section 252(d); and (3) provide a schedule for implementation of the terms and conditions by the parties to the agreement. 47 USC § 252(c).

D. Final Offer Arbitration

"Final offer" (or "best and final offer") arbitration was adopted for this arbitration. In preparing the arbitration report in this matter, the arbitrator will select between the parties' last proposals as to each unresolved issue, selecting the proposal which is most consistent with the requirements of state and federal law and Commission policy. The arbitrator will choose either an entire proposal, or choose between parties' proposals on an issue-by-issue basis. In the event that neither proposal is consistent with law or Commission policy, the arbitrator will render a determination in keeping with those requirements.

E. Presentation of Resolved and Unresolved Issues

The parties resolved a number of issues in this proceeding. The issues were presented in a number of formats.

The Matrix

The parties presented a joint issues statement entitled Matrix of Issues and Positions of MCI and GTE ("matrix"). The final version of this matrix was presented on December 19, 1996. The matrix lists unresolved issues. The matrix was used by the arbitrator as the reference for the parties' positions, with additional reference made to other materials listed below and to the briefs. This decision refers to issues by the numbers shown on the matrix. In many cases, the statement of a party's position is taken from the matrix.

Final Offer of GTE

GTE filed a post-hearing brief and final offer contract language in a document titled "Interconnection, Resale, and Unbundling Agreement Between GTE Incorporated and MCIMETRO ." ("GTE Final Offer Contract").

Final Offer of MCI

MCI filed a post-hearing brief and final offer contract language in a document titled "MCIMETRO Washington Contract Comparison". ("MCI Final Offer Contract").

Contract Language Issue

As a general matter, this decision is limited to the disputed issues presented for arbitration. 47 USC § 252(b)(4). In addition, except where specified, this decision resolves the issues presented, rather than focusing on particular contract language. However, it should be recognized that disagreements over specific contract language are susceptible to being framed as unresolved issues. Adoption of one party's position generally implies that the parties should use that party's contract language incorporating the advocated position in preparing a final agreement. The arbitrator will review requests to choose between alternative proposed contract language on an issue-by-issue basis. Contract language adopted remains subject to Commission approval. 47 USC § 252(e).

F. Generic Pricing Proceeding

On October 23, 1996, the Commission entered an order in this and other arbitration dockets declaring that a generic proceeding would be initiated in order to review costing and pricing issues for interconnection, unbundled network elements, transport and termination and resale.[2] The Commission stated that rates adopted in the

[2]Order on Sprint's Petition to Intervene and to Establish Generic Pricing Proceeding (October 23, 1996)("Generic Pricing Order").

pending arbitrations would be interim rates, pending the completion of the generic proceeding. The proceeding has been initiated and set for prehearing conference.[3] Accordingly, the price proposals made in this arbitration have been reviewed with the goal of determining which offers a more reasonable interim rate. The conclusions of the arbitrator with respect to price proposals and supporting information are made in this context and do not necessarily indicate Commission approval or rejection of cost and price proposals for purposes of the generic case.

G. The Eighth Circuit Order and the FCC Rules

As the parties are aware, the FCC rules[4] implementing the local competition provisions of the Act have been appealed and those rules relating to costing and pricing have been stayed by the United States Court of Appeals for the Eighth Circuit.[5] The provisions of the FCC order and rules not subject to stay are adhered to in this report. Those provisions which are subject to stay do not require compliance pending resolution of the underlying appeal. The arbitrator is free, therefore, to disregard those specific federal requirements. The stay does not preclude reference, however, to underlying rationale and analysis contained in the federal order for whatever value it may have on its merits.

H. GTE's Constitutional Taking Issue

GTE has previously stated an objection on the record that the arbitrator's decisions on the numerous issues submitted for resolution may constitute an unconstitutional taking. GTE presented legal arguments in its post-arbitration Brief addressing this contention. The arbitrator has not considered these legal arguments in the course of resolving the disputed issues. Any claims that an unconstitutional taking has occurred may be duly presented for consideration at some later date to be determined by GTE.

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[3] *In the Matter of the Pricing Proceeding For Interconnection, Unbundled Elements, Transport and Termination, and Resale, Docket Nos.* UT-960369 (general), UT-960370 (USWC), UT-960371(GTE); Order Instituting Investigations; Order of Consolidation; and Notice of Prehearing Conference, November 21, 1996.

[4] *In the Matter of the Implementation of the Local Competition Rules of the Telecommunications Act of 1996*, CC Docket No. 96-98, First Report and Order (August 8, 1996), Appendix B- Final Rules.

[5] *Iowa Utilities Board et al. v. FCC*, No. 96-3321, Order Granting Stay Pending Judicial Review (8th Cir. October 15, 1996). The order also stays the "MFN" rule. *See also,* Order Lifting Stay in Part (November 1, 1996)(stay lifted for 47 CFR §§ 51.701, 51.703, and 51.717).

I. GTE's Constitutional Due Process Issue

Pursuant to the Order on Arbitration Procedure entered by the Commission in this docket on October 2, 1996, the arbitration proceeding was restricted to two days of hearings. GTE claims that this restriction deprived it of a full opportunity to question witnesses or fully present its case. In these proceeding, it was essential to reasonably limit the length of the hearing process in order to meet the statutory deadlines set forth in the Act. Any claims that GTE has been deprived of its constitutional right to due process may be duly presented for consideration at some later date to be determined by GTE.

J. All Issues Addressed In This Proceeding Were Properly Raised

GTE has claimed that the following issues were not properly raised in MCI's Petition for Arbitration: Issue Nos. 68 (in part), 58, 40, and 85. On June 28, 1996 this Commission issued an "Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements under the Telecommunications Act of 1996" ("Interpretive Statement") under Docket No. UT-960269. Paragraph 5 of the Interpretive Statement states that a petition for arbitration shall be accompanied by all relevant documentation concerning the unresolved issues, including the position of each party with respect to those issues. Relevant documentation expressly includes a proposed interconnection agreement.

MCI attached its proposed Interconnection Agreement as Exhibit C to its Petition. Furthermore, MCI attached a matrix of unresolved issues and preliminary positions of the parties to its Petition. *See* Petition, Exhibit D. GTE objects to the submission of these issues on the basis that they are not set forth in Exhibit D. The Post-Arbitration Brief of MCI sets forth specific references where each issue is generally and specifically addressed. *See* Post-Arbitration Brief, p.140-41. The arbitrator finds that the disputed issues were sufficiently identified in MCI's Petition and they are included in this report.

K. Stipulations Between The Parties

Fifteen separate stipulations have been entered into between the parties and collectively been admitted into the record as GTE Exhibit 22. *See* Appendix A. These stipulations originally arose out of an arbitration proceeding in Texas; however, MCI confirmed at the hearing that the stipulations constitute agreements in principle in the State of Washington. (Tr., p.114-15). At the time the arbitrator notified the parties that if they were unable to work out mutually agreeable specific contract language, then the arbitrator would regard the issues as if there were no agreement in principle.

Subsequent to the submission of briefs and best final offers the arbitrator requested clarification from the parties as to whether or not these stipulations resolved issues which otherwise were being presented for a determination. GTE relies on these

stipulations as if they were its position on all issues for which they are cited. MCI acknowledged that there was some inconsistency between the stipulations and the contract language in its best final offer. MCI stated that in those instances where the language of the stipulations was inconsistent with the language of the best final offer, the language of the stipulation would control. In those instances where the language of the stipulations was consistent but different from the language of the best final offer, the language of the best final offer would control. The arbitrator has resolved relevant issues on the basis of these positions of the parties.

II. RESOLUTION OF DISPUTED ISSUES

A. COSTING METHODS AND PRICING (Issue Nos. 1-7)

ISSUE NO. 1: Calculation Of Cost And Pricing Of Unbundled Network Elements.

Statement of Issue. How should the cost of interconnection and unbundled network elements be calculated, and what prices should be established?

GTE Position. In determining the appropriate prices for interconnection and unbundled network elements, GTE states that the arbitrator must interpret the Telecommunications Act of 1996 to provide for the recovery of all of GTE's historic and forward-looking costs, plus a reasonable profit.

GTE states that, at a minimum, it must be able to recover all of its costs:

- Incremental Costs.

- All Forward-Looking Joint and Common Costs. GTE must be allowed to recover all of its forward-looking joint and common costs, and not just a portion of those costs.

- Opportunity Costs. GTE alleges current rates contain a subsidy, or "contribution," which compensates GTE for its obligation of providing below-cost services. ILEC's such as GTE bear certain burdens -- including rate structures that reflect cross subsidies from universal service and carrier of last resort obligations. If new entrants are allowed to supply the higher priced vertical and toll services that are now used to subsidize below cost services, GTE should be entitled to recover its lost opportunity costs.

- Costs of Unbundling. Any price established under the Act must include any new or additional costs incurred to accomplish the tasks of unbundling.

GTE states that its economic framework, M-ECPR ("Market constrained - Efficient Competition Pricing Rule"), bases prices upon forward-looking costs, promotes competition and, when combined with a competitively neutral end-user charge, satisfies the Act's requirement that the ILEC be allowed to earn "a reasonable profit." GTE argues that in order to compensate for costs that cannot be recovered through TELRIC methodologies, the Commission must establish a competitively neutral, nonbypassable end-user charge, and that without some sort of end-user charge, facilities-based competition and M-ECPR pricing of unbundled network elements will produce stranded costs which deprives GTE of its full cost recovery as required by the Act.

GTE also contends that it is the only party in this arbitration that has presented cost studies based on the costs that GTE will incur in providing local telephone service in the future; therefore, the Commission cannot consider other cost studies.

MCI Rebuttal. MCI characterizes GTE's M-ECPR model as conflicting with basic rules for cost studies as laid out by this Commission and the FCC. Most notably, the M-ECPR ensures that GTE will recover its embedded costs which MCI excludes from any forward-looking methodology.

The M-ECPR is also criticized for guaranteeing GTE against suffering any competitive losses by including "lost opportunity" costs in the cost of unbundled elements.

Finally, MCI distinguishes GTE prices as being based on a model which is proprietary, designed only for its own use, and which is not open and subject to verification.

MCI Position. In its Closing Brief, MCI makes reference to several proceedings wherein this Commission has adopted standards for costing and pricing network elements which are relevant to this proceeding.[6] MCI cites the Fourth Supplemental Order in the *Interconnection Proceeding* in particular regarding the application of several basic criteria to pricing/costing issues:

> - Rates and conditions should reflect costs and be fair, just, reasonable and sufficient.
>
> - New entrants should be treated as "co-carriers" and the Commission "should dismantle any remaining barriers to entry and avoid constructing (or authorizing incumbents to construct) any new barriers through decisions on interconnection issues".

[6] *See, e.g.*, *Interconnection Proceeding*, Docket No. UT-941464, et.al.; Fourth Supplemental Order; Sixth Supplemental Order; and Ninth Supplemental Order.

- There should be "open access to the company's cost methodology, input data, assumptions, and cost modeling" so that they would be "auditable, 'checkable'".

- The appropriate measure of cost is Total Service Long-Run Incremental Cost.

MCI's proposed interim rates for interconnection and unbundled network elements are based on Version 2.2.2 of the Hatfield Model of estimating costs. The Hatfield Model is a computerized, engineering-based cost proxy model developed to estimate forward-looking, long-run incremental costs of building the incumbent's network using least cost technology and the existing wire centers of the ILEC. MCI states that because the model is publicly available, and its inputs can be varied by the user, it is possible to directly evaluate the model for accuracy, and to ascertain the sensitivity of the model to changes in the various inputs. MCI also states that the model uses a series of Washington specific data as input: census and geographical data, population by Census Block Group (CBG), business employee data, Washington GTE ARMIS data, GTE wire center data, line counts and traffic data.

The Hatfield Model is based upon "hypothetical" as opposed to "actual costs"; however, MCI contends that this distinction is not relevant insofar as this Commission requires that the parties develop forward-looking costs. The Hatfield Model is intended to be a snapshot because it is a simpler approach and MCI believes that the costs to build a dynamic model do not justify the likely results. The Hatfiled Model does not allow GTE to recover its embedded costs. MCI states that this is consistent with the principles enunciated by this Commission and the FCC.

With regards to common costs, the model allocates approximately 10% of common costs based on an analysis of ARMIS data. MCI contends that if the add-on for common costs was to be any higher than it is, that percentage would add costs which have already been disaggregated and attributed to those unbundled elements which share the cost.

GTE Rebuttal. GTE refers to the FCC Order in support of its position that forward-looking costs should represent "the incremental costs incumbents actually expect to incur." GTE contends that because all of its incremental costs must be recovered, TELRIC must be calculated upon GTE's actual network architecture, and not upon the Hatfield hypothetical network. Contrary to Hatfield's claim, the Model is anything but "user friendly." GTE states that it contains a large number of necessary input values which do not mesh with GTE's data, and that it is impossible to determine how the Hatfield Model defines other inputs.

GTE states that the Hatfield Model itself is really not a computer model at all, but instead is an EXCEL spreadsheet that consists of over 2,705,000 million cells utilized in the model's calculations. Its principal architect, Dr. Robert Mercer, is not an economist. He is not trained in the art of costing methodology. Both he and the other principal developer, Mr. Chandler, are engineers. As an empirical matter, GTE points out that the Model has never before been used to price interconnection and unbundled network elements. In general, GTE's position is that the Hatfield Model has never been verified through comparison to real world phenomena, and that it should be rejected on that basis alone.

GTE states that many of the inputs for the Hatfield Model are arbitrarily based upon "estimates" and "assumptions," and that many of the assumptions used in the Model are biased in favor of lower prices. According to GTE, the Model by its nature is selective it assumes a competitive environment when it will reduce costs, but refuses to account for competition when that assumption would cause costs to rise.

GTE also contends that numerous assumptions that are Hatfield Model default values are flawed. The more critical of these are:

- The Hatfield Model assumes fill factors that are too high. Fill factors relate to the spare capacity of a telephone network. The higher the fill factor, the less spare capacity encompassed in the telephone system.

- The Hatfield Model assumes that the telephone system will share all distribution structures equally with two other utilities, and, as such, will only incur one-third of the costs assigned to each distribution and feeder structure.

- The variable overhead factor used by the Hatfield Model is 10%. The 10% assumption in the Hatfield Model is not based upon any empirical estimate or analysis of GTE's joint and common costs. GTE's studies calculated that a reasonable allocation would be significantly higher.

- It uses heavily discounted prices for new switches and assumes that the telephone company would instantly install all its switching at costs that are substantially lower than actual forward-looking costs.

- Competition will cause the cost of capital to increase, and could do so markedly. The currently prescribed FCC figure is 11.25%. Hatfield's assumption that the cost of capital will be 10.01% clearly does not recognize competition.

- Competition breeds innovation and innovation leads to shorter depreciation lives. The Hatfield Model, however, assumes a depreciation schedule approved in the noncompetitive/regulated environment.

Arbitrator's Decision. The arbitrator adopts the MCI proposed prices for unbundled network elements developed using the Hatfield Model Version 2.2.2, including a loop price of $13.92. Appendix B sets forth the prices for various unbundled network elements developed by MCI using the Hatfield Model Version 2.2.2. In the event that MCI does not propose a rate, or that the Hatfield Model Version 2.2.2 was not the basis for the rate, then the prices based upon the TELRIC methodology as employed by GTE are adopted. Furthermore, since it is not clear that all nonrecurring charges are properly included in MCI's pricing proposal, GTE's proposed nonrecurring charges are adopted. MCI's proposal for the deaveraging of prices is rejected.

Discussion. This is "final offer" arbitration. The two offers presented differ dramatically. The arbitrator's task is not to "split the difference" but to select the offer which most closely complies with the requirements of the federal Act, any applicable FCC requirements, and with this Commission's orders. The rate adopted here, following Commission approval of the interconnection agreement, will remain in effect pending the outcome of the Commission's generic pricing proceeding.[7]

The provisions of the 1996 Act relevant to the determination of the loop pricing issue are contained in section 252(d). Section 252(d)(1) provides that rates shall be just and reasonable and shall be:

"(I) based on the cost (determined without reference to a rate-of-return or other rate based proceeding) of providing the interconnection or network element (whichever is applicable), and

(ii) nondiscriminatory, and

(iii) may include a reasonable profit."

The Commission has already expressed its general approval of the Hatfield model as a means of estimating loop costs in *Washington Utilities and Transportation Commission v. U S WEST Communications, Inc.*, Docket No. UT-950200, Fifteenth Supplemental Order (April 1996) . The Commission's conclusions regarding loop cost in that rate case were based on Version 2.2.1 of the Hatfield Model.

[7]Generic Pricing Order, at 5. This would be the case unless MCI chooses to invoke the provisions of 47 USC § 252(i).

The revised Hatfield study filed in this proceeding has several desirable attributes. It includes all network elements, estimates costs for both exchange services and individual network elements based on TSLRIC principles, and performs a detailed cost breakout. It is publicly available, a significant advantage for any model.

Significantly, the revised Hatfield study uses cost inputs which are more nearly consistent with those found by the Commission to be appropriate. Cost of money, fill factors, and depreciation rates are in line with those which the Commission has previously determined are reasonable.[8] GTE does not use a consistent cost of capital; GTE does not employ an objective fill factor; and the economic lives used in running the Hatfield Model for GTE-Washington are the most recent FCC-approved depreciation data for GTE-WA.

GTE's position is based on the premise that its TELRIC study complies with the Act, with FCC requirements, and is otherwise a reliable basis for setting prices. The record, however, indicates some serious concerns about the GTE approach which make the resulting loop prices comparatively less acceptable as interim rates.

First, the notion of recovering embedded costs through an end-user charge is generally inconsistent with forward-looking cost methodology, which requires that forward-looking shared costs be directly attributable to a particular element or set of elements. Secondly, the inclusion of an opportunity cost as proposed by GTE is a private opportunity cost that would be in GTE's corporate interests, but are not relevant for determining social opportunity costs, which are the costs of the resources consumed in producing unbundled network elements. GTE's argument that there is no distinction between social and private opportunity costs is rejected. Social and private opportunity costs are distinguishable on the basis of externalities, such as the local calling area externality.

It is not clear from this record that these factors will prevent GTE from recovering all of its costs in the post-Act environment. In addition to this Commission's generic pricing proceeding, there is a federal universal service proceeding and an access charge reform proceeding under way, all of which will influence GTE's ability to recover its historic costs.

The fundamental test of any cost study is the integrity of the assumptions, calculations and input values used to develop the ultimate outputs. The only method to test the reliability of the final product is to ensure that all of the data as well as the methodology are accessible for independent scrutiny and evaluation. While the Hatfield model is not perfect, and MCI inputs may require refinement, the MCI proposal is the more reliable, just and reasonable for the establishment of interim rates in this

[8] WUTC v. U S WEST Communications, Inc., Docket Nos. UT-930957, 931055, and 931058, Fourth Supplemental Order (September 1994).

arbitration. 47 USC § 252(d)(1).

Geographic deaveraging is not expressly required by the federal Act. The requirement contained in the FCC rules, 47 CFR § 51.507 (f), is currently stayed by the Eighth Circuit Order. Geographic deaveraging of unbundled loop rates is inconsistent with the Commission's decision against adopting retail rate deaveraging in the most recent USWC rate case. There has not been a recent GTE rate case to reference.

ISSUE NO. 2: Bill And Keep, Transport, Termination

Statement of Issue. What rates are appropriate for transport and termination of local traffic?

GTE Position. Rates should not be symmetrical. Rather, rates should be based on each entity's own costs. GTE proposes use of its interstate access rates.

MCI Position. MCI states that a bill and keep arrangement for termination and transport is an appropriate methodology for the short term. MCI further states that in the long term, bill and keep is only appropriate for termination, but that a symmetrical cost-based rate should apply for transport on a per-minute of use basis.

Arbitrator's Decision. The agreement between the parties shall provide that bill and keep arrangements shall be utilized for the transport and termination of local traffic.

Discussion. The federal Act provides that each telecommunications carrier has the "duty to establish reciprocal compensation arrangements for the transport and termination of telecommunications." 47 USC § 251(b)(5). The federal Act also provides that reciprocal compensation arrangements must "provide for the mutual and reciprocal recovery by each carrier of costs associated with the transport and termination on each carrier's network facilities of calls that originate on the facilities of the other carrier." 47 USC § 252(d)(2)(A)(I). The Act expressly does not preclude "arrangements that waive mutual recovery (such as bill-and-keep arrangements)[.]" 47 USC § 252(d)(2)(B)(I).

While the FCC order concluded that transport and termination should be treated as two distinct functions (*FCC Interconnection Order*, ¶ 1039), the arbitrator does not find a sufficient basis to order that a "symmetrical cost-based rate should apply for transport on a per-minute of use basis" as requested by MCI. It would not be equitable to allow MCI to unilaterally designate an interconnection point and then impose the expense of transport on GTE. The reference to symmetry in this context is illusory. There is no evidence in the record that a cost-based rate on a per-minute of use basis satisfies the requirement of section 252(d)(2) that costs be determined "on

the basis of the reasonable approximation of the additional costs of terminating such calls." Furthermore, there is insufficient evidence in the record to conclude that technologies employed by MCI perform functions similar to those performed by an ILEC's tandem switch. See *FCC Interconnection Order*, ¶ 1090.

The FCC order provides that states may adopt a presumption that traffic is in balance as a basis for approving bill and keep. *FCC Interconnection Order*, ¶ 1113. The burden is then on GTE to rebut the presumption. GTE has not offered evidence in the proceeding sufficient to rebut a presumption of traffic balance.

The Commission has adopted bill and keep as the appropriate interim method of reciprocal compensation for transport and termination. *WUTC Interconnection Order,* Docket No. UT-941464, et.al., pp. 29-30. The order expressed a preference for a capacity-charge method of compensation rather than minutes-of-use. MCI's proposal is consistent with the Commission's Interconnection Order to the extent that it provides for mutual recovery of cost through offsetting of mutual obligations, pursuant to 47 USC § 252(d)(2).

ISSUE NO. 3: Bill And Keep, Transport, Termination

Statement of Issue. Should bill-and-keep be used as a reciprocal compensation arrangement for transport and termination of local traffic on a temporary or permanent basis?

GTE Position. GTE should not be required to use a bill-and-keep arrangement, either initially or permanently. However, GTE would be willing to discuss with MCI a method to assume that traffic is in balance in order to apply bill-and-keep initially. If and when traffic is out of balance, bill-and-keep is not appropriate. GTE proposes that bill-and-keep systems be used unless traffic is more than 10% out of balance.

MCI Position. MCI states that a bill and keep arrangement for termination and transport is an appropriate methodology for the short term. MCI further states that in the long term, bill and keep is only appropriate for termination, but that a symmetrical cost-based rate should apply for transport on a per-minute of use basis.

Arbitrator's Decision. The bill and keep term is adopted on an interim basis. A 10% threshold for the difference between the traffic flows in two directions as proposed by GTE is adopted. Long term rates for transport and termination shall be determined in Docket UT-960369 ("Generic Costing and Pricing Docket").

Discussion. The arbitrator's decision is consistent with the FCC order. *FCC Interconnection Order*, ¶ 1113.

ISSUE NO. 4: Pricing of Interim Number Portability

Statement of Issue. What method should be used to price interim number portability?

GTE Position. GTE should recover its total costs for providing interim number portability. New entrants can allocate or recover their costs as they choose. GTE's costs for interim number portability should be determined based on the network in place today, and allowing for capital, transport and termination, and opportunity and investment costs. The specific rates presented by GTE should be adopted.

MCI Position. Interim number portability should be priced according to FCC pricing principles to ensure that costs are allocated on a competitively neutral basis. MCI advocates use of bill and keep.

Arbitrator's Decision. Neither position of the parties is adopted; GTE should provide interim number portability pursuant to its Washington tariff for that service.

Discussion. The Commission's preferred outcome is to provide number portability at the incumbent's TSLRIC until a true number portability position is implemented. That is the purpose of the Washington tariff which should apply.

ISSUE NO. 5: Pricing Collocation

Statement of Issue. What method should be used to price collocation?

GTE Position. Collocation rates should allow for recovery of all costs, as required by the Act. GTE's proposed prices reflect this requirement.

MCI Position. Collocation rates should be set at TELRIC.

Arbitrator's Decision. The arbitrator adopts GTE's position regarding the pricing of physical collocation. Virtual collocation rates should be set in accord with GTE's federal virtual collocation tariff.

Discussion. *FCC Interconnection Order,* ¶ 629 requires that incumbent LECs provide physical collocation on "rates, terms, and conditions that are just, reasonable, and nondiscriminatory," which is identical to the standard for interconnection and unbundled elements in sections 251(c)(2) and (c)(3). The FCC concluded that a single set of pricing rules for interconnection, unbundled network elements, and collocation provides greater consistency and guidance to the industry, regulators, and the courts.

ISSUE NO. 6: Pricing Access To Poles, Ducts, Conduits, and Rights-of-Way

Statement of Issue. What is the proper methodology for calculating charges for access to poles, ducts, conduits and rights-of-way?

GTE Position. If a state (or GTE's tariff) regulates these kinds of attachments, then the state regulations (or tariff) should apply. GTE notes that the FCC has not yet promulgated rules on this subject. GTE recommends that any rate for attachments be imposed subject to a "true-up" once lawful rates are established.

MCI Position. Prices must be set at TELRIC, be nondiscriminatory, and be imputed into GTE's own local service rates. Prices for pathway facilities should be effective for the term of the Interconnection Agreement.

Arbitrator's Decision. The applicable state or, if none, federal tariff shall govern.

ISSUE NO. 7: Pricing Access To Operations Support Systems (OSS)

Statement of Issue. How should the cost of access to OSS be recovered?

GTE Position. MCI should pay the cost of access to OSS, because MCI is the cost-causer. GTE should not be compelled to pay for OSS access changes made to accommodate MCI.

MCI Position. The costs associated with OSS interfaces should be recovered on a competitively neutral basis. GTE should demonstrate exactly which costs are recovered by each nonrecurring charge (NRC) they propose and those costs should be demonstrated to be TELRIC costs.

Arbitrator's Decision. The cost of access to OSS should be recovered on the basis of TELRIC and should be calculated consistent with the methodology used to calculate unbundled network elements.

Discussion. The FCC concluded that operations support systems and the information they contain fall squarely within the definition of "network element" and must be unbundled upon request under section 251(c)(3). *See FCC Interconnection Order,* ¶ 516. As such, the pricing of access to OSS should be determined on a forward-looking economic basis.

B. RESALE (Issue Nos. 8-27)

ISSUE NO. 8: Pricing Resold Services

Statement of Issue. What is the proper methodology for determining the prices for GTE resold services?

GTE Position. GTE states that its Avoided Cost Study complies with the requirements of the Act and establishes costs "that will be avoided" in a wholesale environment, and that it complies with section 252(d)(3) of the Act in that it identifies the "marketing, billing, collection, and other costs that will be avoided by the local exchange carrier."

According to GTE, it analyzed the costs associated with displaced retail activities, as well as the added costs of providing wholesale services. As to the first element, GTE analyzed its operations, including all of its existing work centers, to determine which activities or functions in each work center would be avoided in a wholesale environment and which would be unaffected. The total costs for affected activities ("affected costs") were determined from the books and records of each work center using GTE's 1995 cost data. The affected costs for each of these services was calculated on a national basis. GTE states that most of the costs that would be avoided are incurred on a national basis. GTE will continue to offer retail, as well as wholesale services.

As to the second element, GTE expects that it will incur additional costs in satisfying MCI's requests that GTE provide it with functionalities and capabilities which are not presently provided to GTE's retail customers. GTE currently has wholesale relationships with other communications carriers. GTE computed increased costs by identifying existing wholesale services that it deemed to be similar in nature to those in each of the retail service categories. These accounts were used as a proxy to compute the costs of substituted wholesale activities. Avoided costs were then calculated by taking affected retail costs and subtracting from it substitute resale costs.

GTE contends that separate discounts should be applied separately by this arbitrator to the respective service elements; a composite figure should not be used as a substitute for this precision. For comparative purposes, the GTE study produced a composite discount of 7%.

In response to, and in accordance with, the now-stayed FCC Order, GTE conducted as an alternative measure a Modified Avoided Cost Study. This study is an ARMIS-based model. GTE intended this study to be used only if the FCC's rules were held to be lawful. GTE's analysis was based upon the same work center cost detail used in its Avoided Cost Study. GTE then calculated individual avoided discount rates for the six direct expense accounts to be applied to the ARMIS model.[9] GTE contends that this proof rebutted the discount factors assumed by the FCC for its avoided discount rates. This study produced an avoided cost discount rate of 10.30%.

MCI Rebuttal. MCI states that it is inappropriate for GTE to employ national data rather than GTE Washington specific data. MCI also states the following shortcomings of the GTE methodology:

- GTE used a series of allocations based upon surrogate allocators like revenues time surveys which are performed by GTE personnel without written guidelines or verifiable procedures to estimate costs not avoided. Thus, the results are unverifiable.

- GTE adds wholesale costs using an unverifiable process which looks to access service data, not data regarding the retail services subject to resale.

- GTE includes losses from competition by way of opportunity costs contrary to the Act, the FCC, and Commission policy.

- When GTE identifies a cost category which contains costs which it cannot avoid, it adds the entire category of costs back in without justification.

- The GTE model does not employ a consistent "top- down" approach.

- GTE uses revenues to divide expenses rather than the MCI approach which properly uses expenses divided by expenses.

MCI Position. MCI proposes that wholesale rates be set at a 16.63%

[9]The account numbers used are as follows: product management (6611), sales (6612), product advertising (6613), call completion (6621), member services (6622), and customer services (6623).

discount from retail rates. MCI applies this rate to all retail services in accordance with the provisions of the FCC Order. MCI states that this approach avoids unnecessary levels of subjectivity incurred by attempts to calculate a different discount per service.

MCI also states that its Avoided Cost Study treats the direct costs of providing retail services as fully avoidable and indirect costs as partially avoidable in the proportion of direct retail expenses to total expenses. Additionally, MCI's model accounts for additional costs that GTE will incur as a result of making sales at wholesale by reducing avoided costs in certain directly avoided categories from 100% to 90%.

GTE Rebuttal. GTE argues MCI's proposed discount is based on MCI assumptions that are not supported by the requirements of the Act, or the evidence in the record:

> - First, MCI's proposal is based on the FCC methodology set forth in its First Report and Order. MCI has provided no backup analysis or study to support these calculations, and has relied solely on the FCC Order. However, the pricing provisions of that Order have now been stayed and are no longer in effect. There is therefore, a complete failure of proof in the record on MCI's part.
>
> - Second, MCI's discount is based on GTE's theoretical "avoidable" costs rather than "avoided" costs. Congress' use of the word "will" rather than "could" in 47 U.S.C. § 252(d)(3) establishes that wholesale rates must be set based on the ILEC's avoided, not "avoidable," cost.
>
> -Third, MCI's methodology calculates the avoided cost discount rate using the denominator of GTE's total <u>expenses</u>, rather than its <u>revenues</u>. GTE states that there is inconsistency between MCI's avoided cost methodology and the assumptions used in the Hatfield model. In calculating the amount of joint and common costs that should be added to GTE's TELRICs, the Hatfield Model looks to a calculation by which overhead costs are divided by the amount of its <u>revenues</u> -- and not expenses. GTE states that this results in a lower joint and common allocator. GTE goes on to state that in determining its avoided cost discount, MCI divides total avoided costs by total expenses -- and not revenues, resulting in a higher discount factor.
>
> - Fourth, MCI relies exclusively on ARMIS account data. GTE states that these accounts do not contain any information regarding GTE's work centers and activities, by which any avoided cost factor could be derived.

In short, GTE contends that MCI's avoidable cost study setting forth avoided discount factors does not provide a reliable basis for this Commission's use in setting wholesale rates.

Arbitrator's Decision. The arbitrator adopts MCI's proposal that wholesale rates be set at a 16.63% discount from retail rates.

Discussion. Section 252(d)(3) of the Act establishes the standard for calculating wholesale discount rates:

> For the purpose of section 251(c)(4), a State Commission shall determine wholesale rates on the basis of retail rates charged to the subscribers for telecommunication services requested, including the portion thereof attributable to any marketing, billing, collection and other costs that will be avoided by the local exchange carrier.

The FCC Order states, "Resale will be an important entry strategy both in the short term for many new entrants as they build out their own facilities and for small businesses that cannot afford to compete in the local exchange market by purchasing unbundled elements or by building their own networks." *FCC Interconnection Order,* ¶ 32. MCI has stated that it intends to engage in resale as part of its overall entry strategy. The setting of a reasonable wholesale rate is important because MCI's costs will include not only what MCI must pay GTE for the service it purchases, but also the costs that MCI will incur in retailing the service, such as marketing, billing, and customer service expenses. MCI will incur retail costs avoided by GTE.

The Telecommunications Act is designed to facilitate economically efficient entry of new competitors into the local exchange market. Thus, the relevant inquiry for determining an appropriate wholesale discount rate is to determine which retail costs are avoidable by an economically efficient competitor selling at wholesale, and not which costs GTE will actually avoid. While specific pricing rules contained in the FCC Order have been stayed, much of the analysis performed by the FCC remains relevant. The FCC Order states criteria for cost studies:

> [W]e reject the argument of incumbent LECs and others who maintain that the LEC must actually experience a reduction in its operating expenses for a cost to be considered "avoided" for purposes of section 252(d)(3). We do not believe that Congress intended to allow incumbent LECs to sustain artificially high wholesale prices by declining to reduce their expenditures to the degree that certain costs are readily avoidable. *FCC Interconnection Order,* ¶ 911.
>
> GTE's calculation of a wholesale discount rate based upon "avoided"

costs instead of readily "avoidable" costs is inaccurate.

The purpose of an avoided cost study is to place the retail cost factor into a relationship with the total cost factor (The terms cost and expense are interchangeable). The MCI model accomplishes this. The use of total revenues as the denominator in calculating the avoided cost discount rate as proposed by GTE would inaccurately result in a lower discount factor. GTE's argument that the Hatfield Model is flawed is discussed elsewhere in this Report.

The FCC neither prohibits nor requires use of a single, uniform discount rate for all of an incumbent LEC's services. *FCC Interconnection Order,* ¶ 916. The FCC Order recognizes that a uniform rate is simple to apply, and avoids the need to allocate avoided costs among services. A uniform discount rate is appropriate on an interim basis in the State of Washington.

ISSUE NO. 9: Avoided Costs - Advertising Expenses

Statement of Issue. Are advertising expenses in their entirety an avoided cost?

Arbitrator's Decision. Issue No. 9 is moot pursuant to the arbitrator's decision in Issue No. 8.

ISSUE NOS. 10, 11: Avoided Costs - Operator Services and Directory Assistance

Statement of Issues. Are Call Completion Costs (Operator Services) and number service costs (Directory Assistance) in their entirety an avoided cost?

Arbitrator's Decision. Issue Nos. 10 and 11 are moot pursuant to the arbitrator's decision in Issue No. 8.

ISSUE NO. 12: Avoided Costs - General and Administrative Expenses

Statement of Issue. Are General and Administrative costs an avoided cost when GTE is wholesaling a local service?

Arbitrator's Decision. Issue No. 12 is moot pursuant to the arbitrator's decision in Issue No. 8.

ISSUE NO. 13: Avoided Costs - Product Management Expenses

Statement of Issue. Are Product Management costs in their entirety an avoided cost?

Arbitrator's Decision. Issue No. 13 is moot pursuant to the arbitrator's decision in Issue No. 8.

ISSUE NO. 14: Avoided Costs - Testing and Plant Administration Expenses

Statement of Issue. What percentage of Testing and Plant Administration costs are an avoided cost?

Arbitrator's Decision. Issue No. 9 is moot pursuant to the arbitrator's decision in Issue No. 8.

ISSUE NO. 15: Avoided Costs - Sales Expenses

Statement of Issue. What percentage of sales expenses is an avoided cost?

Arbitrator's Decision. Issue No. 9 is moot pursuant to the arbitrator's decision in Issue No. 8.

ISSUE NO. 16: Avoided Costs - Uncollectible Expenses

Statement of Issue. What percentage of uncollectible expenses is an avoided cost?

Arbitrator's Decision. Issue No. 9 is moot pursuant to the arbitrator's decision in Issue No. 8.

ISSUE NO. 17: Avoided Costs - New Expenses

Statement of Issue. Does the Act's methodology for determining wholesale rates recognize any new costs that might be caused by the requirement to offer services for resale?

GTE Position. The Act allows for recovery of all costs associated with providing wholesale service. GTE's methodology recognizes the carrier line of business as a substitute for recurring wholesale costs as this line of business supports GTE's current wholesale service market. However, GTE has not accounted for any system modification expense or any one-time expense that it may incur in offering services for resale.

MCI Position. MCI states that the FCC's Order indicates, even if such costs are to be recognized, they are adequately reflected in the default discount rate. MCI's avoided cost methodology accounts for some such costs by using only 90% of various ARMIS system accounts as avoidable.

Arbitrator's Decision. GTE will incur new costs in conducting the wholesale operation; however, the carrier line of business is not a sufficiently accurate measure of what those costs will be. There is insufficient evidence in the record to determine what wholesale costs will be incurred by GTE. In addition, the MCI position on resale discount assumes that ten percent (10%) of certain sales costs will be wholesale costs incurred by GTE.

ISSUE NO. 18: Avoided Costs - Volume Discounts

Statement of Issue. Is a volume discount appropriate in a resale environment, and if so, what should the discount be?

GTE Position. No discounts should be given for volume commitments as GTE's avoided costs are calculated on a transaction basis and do not increase as volume increases.

MCI Position. An additional volume discount should be applied to any services purchased under the Agreement. The Volume Discount should be based on total revenues generated by MCI for all services covered by the Agreement across all regions served by GTE.

Arbitrator's Decision. An additional volume discount should be applied to any services purchased under the Agreement. MCI will receive either the volume discounted rate or 16.63% percent (off the original retail rate), whichever is the larger discount.

Discussion. Typically, volume discounts are achieved by network efficiencies, such as serving a large customer by building dedicated facilities rather than using switched facilities. (DiTirro Tr. at 357). To the extent that volume customers are less expensive to serve, the lower cost should be reflected in the adjustments.

Section 251(c)(4)(A) does not contain any exemptions or exceptions to the requirement that "any telecommunications service" must be offered for resale if it is offered at retail to end-users. Section 251(c)(4)(B) expressly precludes a LEC prohibition on resale of such services, and only permits restrictions or limitations which are reasonable and non-discriminatory. The Act's language, therefore, does not support GTE's position. As a practical matter, creating such an exemption would permit incumbent LECs to avoid the resale requirement altogether by switching all customers to some form of discounted or promotional service plan.

The FCC order is clear on volume discounted services. The FCC order states:

> We find unconvincing the arguments that the offerings under section 251(c)(4) should not apply to volume-based discounts. The 1996 Act on its face does not exclude such offerings from the wholesale obligation. If a service is sold to end-users it is a retail service, even if it is priced as a volume-based discount off the price of another retail service. The avoidable costs for a service with volume-based discounts, however, may be different than without volume discounts.

FCC Interconnection Order, ¶ 951. The FCC rules on resale restrictions do not incorporate an exemption for volume discounts. 47 CFR § 51.613. This provision is not subject to the Eighth Circuit stay. The FCC does go on to note that, while there may be reasonable restrictions on promotions and discounts, *FCC Interconnection Order* ¶ 952, restrictions on resale of volume discounts will "frequently produce anticompetitive results [and] should be considered presumptively unreasonable." *Id.*, ¶ 953.

The FCC order also notes, however, that in calculating the proper wholesale rate, incumbent LECs may prove that their avoided costs differ when selling large volumes. In this arbitration, GTE argues that its avoided costs are calculated on a transaction basis and do not increase as volumes increase. GTE Post-Hearing Brief, p. 101. While this is not a basis for excluding volume discounts entirely from the resale requirement, it can be taken into account in establishing the proper wholesale rate. In this case, there is evidence in the record that GTE avoids retail costs when selling at volume. The record does not enable the arbitrator to determine, however, the extent of avoided costs which remain in volume services after GTE applies a discount.

As noted above, the arbitrator does not adopt the GTE wholesale discounts based on its avoided cost study. The Commission has referred resale pricing to a generic proceeding. Any resale rate adopted in this proceeding, therefore, will be an interim rate. In order to arrive at a rate for volume discounted services on an interim basis, therefore, the arbitrator will treat the volume discount as a reasonable

approximation of the costs avoided by the volume sale.

ISSUE NO. 19: Services Subject to Resale

Statement of Issue. What GTE services should be required to be made available for resale at wholesale rates?

GTE Position. GTE will make available retail services on a wholesale basis except for below-cost services, promotional services, non-recurring charges, ICB services, access services, operator services, and directory assistance services where no discount applies.

GTE will offer the following services for resale at discounted rates: grand-fathered services; optional discount calling plans; and existing AIN services.

MCI Position. GTE services for resale should include all services offered at retail to end users, including promotional, current and future AIN services, wire and voice mail services, enhanced, grandfathered, packaged, individual customer based, contracted and sunsetted services.

GTE should provide necessary maintenance and business process support as well as those technical and systems interfaces required to enable MCI to provide at least the same level and quality of service for all services for resale, functions, features, capabilities and unbundled elements or combinations of unbundled elements.

Arbitrator's Decision. The arbitrator adopts the MCI position, except as to inside wire services. The provision of process support and service quality standards are addressed in other issues.

Discussion. GTE has the duty to "offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers[.]" 47 USC § 251(c)(4)(A). The Act defines telecommunications as "the transmission, between or among points specified by the user, of information of the user's choosing, without change in the form or content of the information as sent or received." 47 USC § 3(48). The term "telecommunications service" means the offering of telecommunications for a fee directly to the public...regardless of the facilities used." 47 USC § 3(51).

Section 251(c)(4)(A) of the Act does not contain any exception to support excluding residential service from the resale requirement. GTE must apply the wholesale discount to residential service. GTE's argument that residential service is below-cost has not been accepted by this Commission. Neither the Act nor the FCC order support the GTE position.

The Act contains no exception for deregulated or non-tariffed services. They must be offered for resale unless they are not "telecommunications services." Inside wire is not a "transmission" service and need not be made available for resale. Voice messaging presents a difficult issue. The Commission has not stated whether voice mail constitutes a telecommunications service. However, both the federal and Washington definitions of telecommunications refer to transmission of information. It is difficult to envision voice mail as a viable service without its related information transmission functions, which enable both the storage and retrieval of messages. If voice mail is not itself a telecommunications service, it has telecommunications services bundled with it. Voice mail functions are part of the switch "fabric."[10] For purposes of the resale requirements in this arbitration, voice mail is considered to be a telecommunications service.

The FCC concludes that promotional offerings are not exempt from the resale provisions of the Act. *FCC Interconnection Order,* ¶ 948. However, the FCC also adopts a presumption that promotional prices offered for a period of 90 days or less need not be offered at a discount to resellers. *FCC Interconnection Order,* ¶ 949, 950.

ISSUE NO. 20: Services to the Disabled

Statement of Issue. Is GTE required to offer for resale at wholesale rates services to the disabled, including special features of that service such as free directory assistance service calls, if provided by GTE?

GTE Position. Mandated social programs that provide for discounts of special rates are the responsibility of the CLEC (the retail provider of service). Further, it is the responsibility of each CLEC to verify and document their own customer's status.

MCI Position. GTE should make all of its telecommunications services available for resale to MCI on terms and conditions that are reasonable and non-discriminatory. Where GTE provides related services for the disabled, it should also provide those services to MCI in order for it to comply with the nondiscrimination provisions of the Act.

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[10]Voice mail, for example, generally relies on a "stutter" dial tone obtained from the switch to indicate that messages have been received.

Arbitrator's Decision. MCI must determine whether its customers qualify for social programs and bear the cost.

Discussion. To the extent that social programs reduce the amount of charges that qualifying consumers pay, they involve a reduction from the retail rate which the CLEC recovers from an internal or external source. Accordingly, the social program rate is not a retail rate.

ISSUE NO. 21: Resale Restrictions

Statement of Issue. What resale restrictions should be permitted, if any?

GTE Position. MCI should be prohibited from "cross class" selling, i.e. MCI may only resell services to that class of customer obtaining identical services from GTE. Additionally, MCI should be prohibited from reselling to interexchange carriers and other telecommunications service providers.

MCI Position. GTE should impose no restrictions on MCI's resale of services except for those specifically sanctioned by the FCC (i.e. lifeline services and residential to business).

Arbitrator's Decision. GTE should impose no restrictions on MCI's resale of services except for lifeline services and residential service to businesses.

Discussion. In ¶ 62, the FCC addressed resale of residential service to business customers, and the resale of Lifeline service to non-qualifying residential customers. It concluded that a restriction against cross-class resale for those services would be reasonable. The FCC addressed resale of shared tenant services in ¶ 963. In that instance, it concluded that it would not be reasonable to adopt a restriction against resale of shared tenant services.

The FCC addressed other cross-class restrictions in ¶964. It decided to also presume that other restrictions would be unreasonable:

> We also conclude that all other cross-class selling restrictions should be presumed unreasonable. Without clear statutory direction concerning potentially allowable cross-class restrictions, we are not inclined to allow the imposition of restrictions that could fetter the emergence of competition. As with volume discount and flat-rated offerings, we will allow incumbent LECs to rebut this presumption by proving to the state commission that the class restriction is reasonable and nondiscriminatory.

There is no legitimate concern about resale of business service to residential customers. The only cross-class scenario with public policy considerations supporting protection for price discrimination is the resale of residential service to business customers.

ISSUE NO. 22: GTE List of Services

Statement of Issue. How soon after this agreement takes effect should GTE provide MCI with a list of GTE's telecommunications services?

GTE Position. GTE shall provide MCI with a list of all telecommunications services, features and functions offered at retail rates to its customers, including new services, trial offers and promotions lasting longer than 90 days within a reasonable time after the effective date of the Agreement. When GTE offers a new service, it does so by means of a tariff offering that is subject to review by the Commission, and GTE's tariffs provide notice of all new services to the general public, including CLECs.

MCI Position. GTE should provide MCI with a list of all Telecommunications Services features and functions, including new services, trial offers, and promotions within 10 days of the Effective Date of this Agreement.

Arbitrator's Decision. GTE shall provide MCI with a list of all telecommunications services, features and functions offered at retail rates to its customers, including new services, trial offers and promotions lasting longer than 90 days within 10 days of the Effective Date of the Agreement.

Discussion. A willing seller in a competitive marketplace would seek to inform its customer base of all telecommunications services available for resale as soon as they were available. GTE will have ample time to prepare a list prior to approval of the Agreement.

ISSUE NO. 23: Notification of New Services

Statement of Issue. What is a reasonable period for advance notification of new services?

GTE Position. GTE will file tariffs prior to offering new services. The tariff filing, in effect, serves as a public notification. This issue has been resolved by a stipulation between the parties. GTE relies on Stipulation 207991.1.

MCI Position. GTE should notify MCI of any proposed changes in the terms and conditions under which it offers unbundled network elements including, but not limited to, the introduction or discontinuance of any features, functions, services, promotions or changes in rates at least 45 days prior to the effective date of such change, or concurrent with GTE internal notification process for such change, or as required by state notification guidelines, whichever is earliest.

Arbitrator's Decision. Stipulation 207991.1 shall be adopted by the arbitrator subject to the determination of Issue No. 19 herein. GTE is not required to give advance notice of promotions lasting less than 90 days; however, GTE shall give notice of promotions lasting less than 90 days on the date that any such promotion begins. GTE is required to give advance notice of promotions lasting more than 90 days.

Discussion. The language of Stipulation 207991.1 contemplates different parameters than MCI's best final offer. Therefore, the language of the stipulation shall control. Pursuant to resolution of Issue No. 19, promotions lasting more than ninety days shall be made available for resale. In a resale environment, adequate advance is necessary in order to adjust business operations to the change. MCI is not entitled to advance notice of promotions for which it is not authorized to resell; however, there is no loss of a competitive advantage to GTE by notifying MCI at such time that a short term promotion is initiated. A short term promotion is initiated on the first day that it is made available to GTE customers. Notification of the initiation of a promotion lasting less than ninety days will enable MCI to verify the status of GTE's promotions, and it will help to avoid ongoing disputes between the parties on this issue.

ISSUE NOS. 24, 25, 26: Resale - Payphone, Semi-Public and COCOT Lines

Statement of Issue. Should GTE be required to offer public payphone, semi-public pay phone, COCOT coin and COCOT coinless lines to MCI at wholesale rates?

GTE Position. Section 251(c)(4) of the Act provides that GTE must offer for resale at wholesale rates any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers. GTE does not provide end user public payphone service at retail.

The provisioning of semi-public payphones has been deregulated by the FCC and is no longer offered to subscribers at retail under GTE's local exchange tariff.

GTE will provide COCOT coin and coinless line services under the terms of applicable tariffs. The FCC determined that the LEC need not make available service to independent public payphone providers at wholesale rates.

MCI Position. A distinction must be made between GTE's offering of bundled payphone services and the offering of the access line and other network services which MCI seeks to obtain at wholesale rates. GTE provides both bundled payphone services, as well as access lines to independent payphone providers. MCI is a telecommunications carrier and is seeking to resell telecommunications services, such as payphone access lines, call screening, LIDB database services, and other telecommunications services. MCI is not seeking to interconnect and purchase these services as an independent payphone provider. LECs must provide their telecommunications services separately from their provision of payphone customer premises equipment ("CPE") and make their services available on a nondiscriminatory basis to all payphone service providers.

Arbitrator's Decision. Payphone services are services which GTE provides at retail to noncarriers. GTE must provide them at a wholesale discount.

Discussion. In ¶876, the FCC concluded that payphone services are retail services which incumbents provide to customers who are not telecommunications carriers:

> With regard to independent public payphone providers, however, we agree with the American Public Communication Council's argument that such carriers are not "telecommunications carriers" under section 3(44). We therefore also agree with the American Public Communications Council's contention that the services independent public payphone providers obtain from incumbent LECs are telecommunications services that incumbent LECs provide "at retail to subscribers who are not telecommunications carriers" and that such services should be available at wholesale rates to telecommunications carriers. Because we conclude that independent public payphone providers are not "telecommunications carriers," however, we conclude that incumbent LECs need not make available service to independent public payphone providers at wholesale rates. This is consistent with our finding that wholesale offerings must be purchased for the purpose of resale by "telecommunications carriers."

ISSUE NO. 27: Wholesale Pricing Structure

Statement of Issue. Should each and every retail rate have a corresponding wholesale rate?

GTE Position. GTE will make available retail service on a wholesale basis at a wholesale rate structure that mirrors the retail rate structure except for below cost services, promotional services, nonrecurring charges, ICB services, access services, operator services and directory assistance services where no discount applies. Only those retail services that are offered at wholesale should have a corresponding wholesale rate.

MCI Position. GTE's wholesale pricing structure should mirror GTE's retail pricing structure. MCI applies a wholesale discount rate of 16.63% to each and every retail rate of GTE.

Arbitrator's Decision. The wholesale discount rate of 16.63% is adopted across the board.

Discussion. *FCC Interconnection Order,* ¶871 generally requires a wholesale rate for each retail service:

> Section 251(c)(4)(A) imposes on all incumbent LECs the duty to offer for resale "any telecommunications service that the carrier provides at retail to subscribers who are not telecommunications carriers." *(Footnote Omitted)* We conclude that an incumbent LEC must establish a wholesale rate for each retail service that: (1) meets the statutory definition of a "telecommunications service;" and (2) is provided at retail to subscribers who are not "telecommunications carriers."

C. UNBUNDLED NETWORK ELEMENTS ("UNEs") (Issue Nos. 28-40)

ISSUE NO. 28: Extent of UNEs

Statement of Issue. What UNEs should be provided to MCI?

GTE Position. This issue is resolved in part by stipulations between the parties. GTE will unbundle the network and provide MCI with the following elements: NID; loops; ports; transport to either a main distribution frame or a meet point with transport facilities of MCI pursuant to rates, terms, and conditions of the GTE EIS tariff; and signaling system.

GTE's provision of UNEs is dependent on MCI's agreement to certain conditions which are necessary to preserve the integrity of the network and ensure that GTE recovers costs: MCI shall notify GTE when it intends to deploy any service-enhancing copper cable technology, and certify that that such technology will not interfere with existing or future technology within a given cable sheath or other GTE facility; and MCI shall pay all costs associated with unbundling the loop from the switch, including the costs of testing MCI's technology and the costs of any loop conditioning.

GTE relies on Stipulations 208046.1, 208047.1, 207996.1, 208128.1, 207945.1, and 207995.1.

MCI Position. GTE should provide UNEs and ancillary services at any technically feasible points, as requested by MCI, including but not limited to: local loop; local switching; tandem switching; transit switching; transport; data switching; intelligent network and advanced intelligent network; operator service; directory assistance; 911; white and yellow pages; repair and maintenance; and dark fiber. In addition, GTE should provide operations support systems used and useful in the following: pre-ordering; ordering; provisioning; design; engineering; maintenance; repair; tracking; management; billing; and any other functions or functionality associated directly or indirectly with UNEs and ancillary services.

Arbitrator's Decision. Stipulations 208046.1, 208047.1, 207996.1, 207945.1, and 207995.1 shall be adopted by the arbitrator. Stipulation 208128.1 is adopted subject to the BAR process set forth in Stipulation 208046.1. Furthermore, GTE should provide network elements pursuant to the Arbitrator's decisions on unbundling in Issue Nos. 30 through 40. Otherwise, the position of MCI is adopted.

Discussion. Stipulations 208046.1, 208047.1, 207996.1, 207945.1, and 207995.1 contain language which is inconsistent with MCI's best final offer; therefore, the language of the stipulations shall control. Stipulation 208128.1 does not resolve the terms on which those services might be offered. Insofar as MCI may be seeking a level of support and service which is different than that which GTE provides to itself, the BAR process protects both parties.

Section 251(c)(3) of the Act requires incumbents to provide access to network elements on an unbundled basis at any technically feasible point; §251(b)(3) requires incumbents to provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listing.

FCC Rule §51.319 specifies unbundling requirements, and §51.319(g) requires incumbents to provide access to operator service and directory assistance facilities where technically feasible.

In its *Interconnection Order*, ¶534, the FCC explained the reasoning behind §51.319(g):

> We conclude that incumbent LECs are under the same duty to permit competing carriers nondiscriminatory access to operator services and directory assistance facilities as all LECs are under section 251(b)(3). *(Footnote Omitted)* We further conclude that, if a carrier requests an incumbent LEC to unbundle the facilities and functionalities providing operator services and directory assistance as separate network elements, the incumbent LEC must provide the competing provider with nondiscriminatory access to such facilities and functionalities at any technically feasible point. We believe that these facilities and functionalities are important to facilitate competition in the local exchange market.... We therefore conclude that unbundling facilities and functionalities providing operator services and directory assistance is consistent with the intent of Congress.

ISSUE NO. 29: Database Dip Charges

Statement of Issue. Should MCI be charged for 800/888 database dips that result in that call being routed to GTE as the 800/888 service provider?

GTE Position. The charge for database dips is required to recover the costs for database 800/888 functionality. The receipt of revenues on an 800/888 call and the receipt of revenues for performing 800/888 database dips allow for the recovery of separate and distinct costs.

MCI Position. MCI should not be required to pay for database dips which are for calls for which MCI receives no revenue and only GTE as the 800/888 service provider receives revenue. Compensation for the termination of toll traffic and the origination of 800 traffic between the interconnecting parties should be based on the applicable access charges.

Arbitrator's Decision. GTE's position is adopted by the arbitrator.

Discussion. Database dips are independent network inquiries and are distinct from the completion of related calls.

ISSUE NO. 30: Implementation of UNEs

Statement of Issue. When should GTE offer UNEs and services for resale.

GTE Position. GTE states that it will provide UNEs to MCI as soon as reasonably practicable after the effective date of the agreement between the parties. GTE proposes that the parties jointly develop provisioning time frames once the scope and area of UNEs and services are known.

MCI Position. For UNEs and services for resale, GTE should provide MCI with the capability to order local service, intraLATA, interLATA, and international toll services by entering the MCI subscriber's choice of carrier on a single order on or before January 1, 1997. GTE should also provide MCI with the capability to order separate interLATA and intraLATA carriers on a line or trunk basis.

Arbitrator's Decision. GTE shall provide UNEs to MCI as soon as reasonably practicable after the effective date of the Agreement which is approved by the Commissioners.

ISSUE NO. 31: Extent of Combining UNEs

Statement of Issue. To what extent should MCI be permitted to combine network elements?

GTE Position. MCI may lease and interconnect to whichever of these unbundled network elements MCI chooses, and may combine these unbundled elements with any services or facilities that MCI may itself provide, pursuant to the following terms:

a. Interconnection for access to unbundled elements shall be achieved via expanded interconnection/collocation arrangements.

b. MCI shall maintain those arrangements at the wire center at which the unbundled services are resident.

c. Each loop or port element shall be delivered to the MCI collocation arrangement over a loop/port connector applicable to the unbundled services through other tariffed or contracted options.

d. MCI may combine unbundled network

> elements with MCI's own facilities. MCI shall not combine unbundled network elements purchased from GTE to bypass resale offerings.

If MCI were to unbundle the switch and then recombine those network elements to bypass resale offerings, it would be able to avoid access charges, because GTE will have no way of knowing whether a call routed by MCI is a local call, an intraLATA call or a long distance call. The Act and the FCC's First Report and Order require MCI to continue paying access charges.

MCI Position. MCI may use one or more network elements to provide any feature, function, capability or service option that such network element(s) is capable of providing or any feature, function, capability or service option that is described in the technical references identified in the Agreement, or as otherwise may be determined by MCI. GTE should offer each network element individually and in combination with any other network element(s) in order to permit MCI to provide telecommunications services to its customers.

Arbitrator's Decision. MCI may order and GTE should provision unbundled network elements either individually or in any combination on a single order. Network elements ordered as combined should be provisioned as combined by GTE unless MCI specifies that the network elements ordered in combination be provisioned separately.

Discussion. Section 251(c)(3) of the Act requires an incumbent to provide elements in a manner that allows requesting carriers to combine the elements into services. The FCC Rules, §51.315(c) require incumbents to combine elements in any technically feasible combination that will not harm the other carriers.

In ¶293 of the FCC Order, the FCC concludes that Congress did not want incumbents to impede entry by declining to combine elements when new entrants might not have the capability to do so:

> We agree with AT&T and Comptel that the quoted text in section 251(c)(3) bars incumbent LECs from separating elements that are ordered in combination, unless a requesting carrier specifically asks that such elements be separated. We also conclude that the quoted text requires incumbent LECs, if necessary, to perform the functions necessary to combine requested elements in any technically feasible manner either with other elements from the incumbent's network, or with elements possessed by new entrants, subject to the technical feasibility restrictions

> discussed below. We adopt these conclusions for two reasons. First, in practice it would be impossible for new entrants that lack facilities and information about the incumbent's network to combine unbundled elements from the incumbents' network without the assistance of the incumbent.... We do not believe it is possible that Congress, having created the opportunity to enter local telephone markets through the use of unbundled elements, intended to undermine that opportunity by imposing technical obligations on requesting carriers that they might not be able to readily meet.

ISSUE NO. 32: Restrictions on Recombined UNEs.

Statement of Issue. Should MCI be permitted to request a combination of network elements which would enable it to replicate services GTE offers for resale?

GTE Position. Such a recombination of GTE's UNE would eliminate the distinction between resale and UNE in the Act, it enables MCI to engage in tariff arbitrage, and it would allow MCI to avoid access charges.

MCI Position. MCI may order and GTE should provision unbundled network elements either individually or in any combination on a single order. Network elements ordered as combined should be provisioned as combined by GTE unless MCI specifies that the network elements ordered in combination be provisioned separately.

Arbitrator's Decision. MCI should be permitted to request a combination of network elements, notwithstanding the fact that it would enable MCI to replicate services that GTE offers for resale.

Discussion. The 1996 Act states, in pertinent part, that it is:

> "The duty [of the incumbent LEC] to provide, to any requesting telecommunications carrier *for the provision of a telecommunications service*...access to network elements on an unbundled basis[.] An incumbent local exchange carrier shall provide such unbundled network elements in a manner *that allows requesting carriers to combine such elements in order to provide such telecommunications service."* 47 USC § 251(c)(3). (Emphasis added).

The Act, on its face, therefore, appears to expressly permit the combination of elements by a requesting carrier for the purpose of providing a telecommunications service. The FCC takes this view, finding no basis to conclude from the Act's language "a limitation or requirement in connection with the right of new entrants to obtain access to unbundled elements." *FCC Interconnection Order*, ¶328.[11] Consistent with this interpretation, the FCC rules permit the combination of unbundled elements by requesting carriers to provide a telecommunications service. 47 CFR § 51.315(a). This section of the FCC rules is not subject to the Eighth Circuit stay.

While GTE makes a number of practical and policy arguments against permitting combination of elements into a "finished service," GTE's primary statutory argument is that Congress' incorporation of distinct resale and unbundling provisions allows the inference that Congress intended the limitation that GTE seeks. It does not identify any language in Section 251(c)(3) which supports imposition of such a restriction on unbundling. Furthermore, MCI will not be able to unfairly avoid access charges because both parties agree to contract language providing for separate two-way trunks for the exchange of toll traffic transiting GTE's network. *See* GTE Proposed Contract, Art. IV, § 4.3.2.

ISSUE NO. 33: Sub-loop Unbundling

Statement of Issue. Is sub-loop unbundling technically feasible, and if so, under what terms and conditions should it be offered?

GTE Position. GTE will agree to provide as separate items the loop distribution, loop concentrator, and loop feeder on an individual case-by-case basis where feasible, and only if MCI pays the cost of providing them separately. This is the appropriate way to proceed because sub-loop unbundling is not technically feasible in all instances. Since there is no standard network configuration, the technical feasibility of such unbundling will depend on the manner in which each particular loop is configured. The parties have entered into stipulations to handle such sub-loop unbundling requests on a bona fide request ("BAR") basis.

GTE relies on Stipulations 208046.1 and 208047.1.

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[11] *See generally, FCC Interconnection Order*, ¶¶ 329-341. The FCC rejects many of the arguments raised here by GTE, stating, for example:

> We disagree with the premise that no carrier would consider entering local markets under the terms of section 251(c)(4) [resale] if it could use recombined network elements solely to offer the same or similar services that incumbents offer for resale. We believe that sections 251(c)(3) and 251(c)(4) present different opportunities, risks, and costs in connection with entry into local telephone markets[.]

Id., ¶ 331.

MCI Position. Access to loop distribution is technically feasible in general for feeder distribution connections in the interface design. Local loops should be unbundled into the following components: loops concentrator/multiplexer; loop feeder; network interface device ("NID"); and distribution. MCI requests that these sub-loop elements be made available upon demand. MCI opposes a case-by-case process as proposed by GTE.

Arbitrator's Decision. Stipulations 208046.1 and 208047.1 shall be adopted by the arbitrator. Sub-loop unbundling requests shall be processed on a bona fide request basis.

Discussion. The FCC rules do not require subloop unbundling. The FCC did not feel that it had sufficient information to resolve technical feasibility issues for subloop unbundling on the national level. In ¶391, it left the issue to the states:

> … the technical feasibility of subloop unbundling is best addressed at the state level on a case-by-case basis at this time.

Subloop unbundling, to the extent it is economically feasible, will result in a more efficient network. The technical feasibility of such unbundling will depend on the manner in which each particular loop is configured. Insofar as GTE may incur additional costs in providing such unbundling, the BAR process protects both parties.

ISSUE NO. 34: Unbundled Switching Element

Statement of Issue. What should the unbundled local switch element include?

GTE Position. The switch element should include the port. Unbundling the switch as MCI requests has numerous feasibility problems, it ignores the limitations on switch capacity and the substantial cost of modifying existing switches, and unbundling these switch items would prevent GTE from identifying calls routed to an IXC, thereby enabling MCI to avoid access charges.

The port generates dial tone and provides the customer a pathway into the public switched telecommunications network. The port does not include all the switching and other capabilities ("vertical features") in the switch. The vertical switch features are services, not elements, and therefore need not be unbundled under the Act. Through the port MCI can obtain access to both the local switching capability of GTE's switch and the capability to route calls from the trunk side of the switch. This provides MCI with access to any features on the switch which GTE uses. To the extent that a switch may have capabilities which GTE does not use, and has not purchased

from the switch manufacturer, those capabilities could only be provisioned if MCI paid the associated costs, including any necessary switch capacity augmentation.

MCI Position. MCI requests all features and functionality inherent to the switch or switch software, including , without limitation, Advanced Intelligent Network ("AIN") triggers. The costs of any expansion of switching capacity should be considered a cost of doing business and should not be the subject of a special charge. GTE should offer all local switching features that are technically feasible and provide offerings at parity by GTE to itself or any other party.

Local switching, including the ability to route to MCI's transport facilities, dedicated facilities, and systems, should be unbundled from all other UNE.

Arbitrator's Decision. The unbundled switching element shall include all features and functionality inherent to the switch or switch software. To the extent that GTE provides AIN triggers they should be included. To the extent that a switch may have capabilities which GTE does not use and has not purchased from the switch manufacturer, those capabilities are deemed not technically feasible for the purpose of this arbitration. If MCI desires capabilities which require additional direct expenses by GTE the parties shall resort to the BAR process.

Discussion. The Act requires incumbent LECs to provide access to network elements on an unbundled basis. 47 USC § 251(c)(3). The FCC has concluded that the unbundled local switching element includes all vertical features that the switch is capable of providing. *FCC Interconnection Order*, ¶ 412. This is consistent with the definition of "network element" found in the Act. 47 USC § 153(29). The arbitrator adopts the FCC's reasoning in ¶ 414.

ISSUE NO. 35: Access to Advanced Intelligent Networks ("AIN")

Statement of Issue. Should GTE provide MCI access to its AIN, and if so, under what terms and conditions?

GTE Position. GTE agrees to provide MCI access to the AIN. MCI can obtain access to GTE's AIN from GTE's AIN SCP. MCI can obtain access by purchasing GTE local switching or via MCI's local switch. GTE believes issues regarding access to AIN have been resolved in negotiations with MCI, and as such are not currently before the Commission.

GTE relies on a purported agreement between the parties that the language contained in Article VI, Section 12 of GTE's proposed agreement has been agreed to on a national basis.

MCI Position. MCI states that the parties have an agreement in principle,

but that they disagree over specific contract language. MCI proposes the following:

> - MCI should be allowed to purchase the entire set of AIN features or functions, or a subset of any one or any any combination of such features or functions, on a subscriber-specific basis; and
>
> - AIN services provided by GTE shall meet the following requirements:
> - AIN, whether offered under tariff or otherwise, shall be available for resale, without any geographic restrictions;
> - GTE shall provide full functionality access, including the Service Control Point Database and Intelligent Functions;
> - All service levels, features, and function components of AIN shall meet the service parity requirements of the Agreement; and
> - MCI may purchase any and all levels of AIN service for resale, without restriction on the minimum or maximum number of lines or features that may be purchased or any one level of service.

Arbitrator's Decision. The specific contract language proposed by GTE is adopted by the arbitrator. Access to any and all GTE service applications resident in GTE's SCP shall include access to all resident databases and intelligent functions.

Discussion. The GTE contract language does not specifically address access to the SCP database and intelligent functions, and it uses different semantics than the MCI proposed language. *See* GTE Proposed Contract, Art. V § 5.12; Art. VI, § 12. A SCP is a remote database within the SS7 network and it supplies the translation and routing data needed to deliver advanced network services. As such, access to the service applications resident in the SCP is considered to be synonymous with access to databases resident in the SCP.

ISSUE NO. 36: AIN Transaction Capabilities

Statement of Issue. Should GTE be required to exchange AIN Transaction Capabilities Application Part ("TCAP") messaging between GTE end offices and MCI service control points ("SCP") via interconnection of MCI's SS7 network to the GTE SS7 network?

GTE Position. This type of interconnection is not technically feasible. In order to provide such interconnection , MCI would need direct access to GTE's AIN triggers. Providing MCI a direct link between GTE's triggers and MCI's platform would be unnecessary to providing full functionality, endanger the integrity of the GTE network and raise the risk of system faults. GTE recommends that MCI participate with GTE and other industry participants in an industry forum to define necessary interconnection requirements for this type of interconnection.

Although GTE believes issues regarding access to AIN have been resolved in negotiations with MCI, it sets forth the ramifications of MCI's request. Direct access to AIN would threaten network reliability and security. End office switches were not designed to support the direct access which MCI seeks. Direct access could allow third parties to charge for: billing information; carrier identification codes; calling party numbers; and, privacy indicators. AIN also introduces a set of functional capabilities that allow an AIN SCP to control internal switch call processing functions. For all these reasons, direct access could severely impact the reliability and security of the public-switched network system, other telecommunications service providers' networks, and end users.

GTE relies on a purported agreement between the parties that the language contained in Article VI, Section 12 of GTE's proposed agreement has been agreed to on a national basis.

MCI Position. MCI states that this level of interconnection is required in order for MCI to deploy its own AIN platform. Network integrity is not compromised. While there is some general agreement between the parties, the parties disagree on the contractual details. MCI proposes that SS7 AIN access should provide the MCI SCP access to the GTE local switch via interconnection of the GTE SS7 and MCI SS7 networks. This interconnection arrangement shall result in the GTE local switch recognizing the MCI SCP as at least parity with GTE's SCPs in terms of interfaces, performance and capabilities.

Arbitrator's Decision. Any stipulation or agreement between the parties shall control the decision on this issue. Otherwise, GTE's position is adopted by the arbitrator.

Discussion. *FCC Interconnection Order,* ¶ 480 sets forth network reliability and security concerns consistent with GTE's position.

ISSUE NO. 37: Access to SS7 System

Statement of Issue. Should GTE provide MCI access to GTE's SS7 system, and if so, at what points and under what terms and conditions?

GTE Position. GTE has offered interconnection with its SS7 system at the signal transfer points (STP), but not at other points. Access to the service control points (SCP) and associated databases is technically feasible at this time only through the STP pair associated with that SCP. MCI must pay for the work and the access.

Today, interconnection with an SS7 network occurs at the STP, which was designed to be the entry point to an SS7 network and to provide access to all SS7 functions. The STP is the only physical point at which interconnection is technically feasible, and GTE will offer such interconnection. By interconnecting at the STP, MCI can gain access to the SCPs and associated databases. MCI can access all of the SS7 functions through this type of interconnection, and the unavailability of further levels of unbundling will not harm its ability to compete in the local service market. Any unbundled access to some SS7 components would jeopardize network integrity Further, there are no technical standards to support such unbundling.

GTE believes access to SS7 has been resolved through negotiations with MCI, with the expectation of a rate design and billing capability issue. MCI's rate design request is not technically feasible. MCI's proposed rate design for use of GTE's SS7 network includes usage rate elements not currently contained in GTE's relevant tariff and which GTE could not measure and bill. In order to modify its network and install this measurement and billing capability, GTE would have to make a significant new investment not warranted by MCI's rate design preference.

MCI Position. MCI requests that SS7 should be separately provided as signaling link, STPs, and access to SCP databases. GTE agrees to offer interconnection with its SS7 system at the STP, but not at other points. MCI should not have to pay GTE for access and associated work. MCI proposes:

- GTE should provide access to the SS7 Signaling Network and connectivity to all components of the GTE SS7 network..
- The connectivity provided should fully support the functions of GTE switching systems and databases and third-party switching systems with A-link access to the GTE SS7 network.
- GTE should provide Switching Service Point (SSP) capabilities and signaling software to interconnect the signaling links destined to the STPs.
- In the event that local switching is provided out of a switch without SS7 capability, the tandem shall provide this capability.
- STPs should provide access to all other network elements connected to the GTE SS7 network and support their functions.

Arbitrator's Decision. GTE's position is adopted by the arbitrator.

Discussion. GTE is under no duty or obligation to provide MCI with direct access to the STPs or the databases (which would be the SCPs) from a MCI switch. GTE is offering links and access to the GTE STP from the MCI STP as required.

ISSUE NO. 38: Unbundled Signaling Elements

Statement of Issue. Is GTE required to provide unbundled signaling elements (STP, SCPs, Links, etc.) at cost based rates? Is GTE's SCP database an UNE as defined in the Act?

GTE Position. Unbundling the SS7 system itself into discrete parts is not currently technically feasible, and would jeopardize the integrity of the network. Further, there are no technical standards for doing so. Direct access to GTE's SCP is not technically feasible. Unbundling the signaling elements is not technically feasible, therefore, it cannot be provided at "cost-based rates."

GTE believes access to SS7 has been resolved through negotiations with MCI. The only exception is MCI's demand that it be provided SS7 ports at no cost. There is no reason for an SS7 port in this regard, to be treated differently than any other type of port. MCI should pay the costs associated with the use of this element.

MCI Position. GTE should provide interconnection to its signaling elements at TELRIC-based rates. GTE's signaling elements, including its SCP, are to be considered unbundled elements. Access to the GTE's SCPs should be provided through SS7 interconnectivity as defined by such industry standards as TCAP. GTE should warrant the accuracy of the information provided by the SCP databases. Technical infeasibility has not been established in this proceeding.

Arbitrator's Decision. GTE should provide the interconnection to its signaling elements at TELRIC-based rates as generated by the Hatfield Model Version 2.2.2. *See* Appendix B. GTE is under no obligation to warrant the accuracy of information that it provides in parity with the information that it provides to itself. If MCI seeks a higher standard of service quality then the matter should be subject to the BAR process.

ISSUE NO. 39: SCE/SMS AIN Access

Statement of Issue. Should MCI have the ability to create service applications from the GTE Service Creation Environment and Service Management System AIN Access?

GTE Position. GTE states that it is willing to allow MCI the ability to create service applications as set forth in the GTE proposed Contract and that MCI has agreed to that contract provision.

MCI Position. The GTE Service Creation Environment/Service Management System ("SCE/SMS") AIN Access should provide MCI with the ability to create service applications via the GTE SMS to the GTE SCP. This interconnection arrangement should provide MCI access to the GTE development environment and administrative system in a manner at least in parity with GTE's ability to deliver its own AIN-based services.

Arbitrator's Decision. The operational interfaces which GTE provides to MCI for direct access must be at parity with the interfaces it provides for internal use.

Discussion. FCC Rule § 51.319(e(3) states that an incumbent LEC shall provide a requesting telecommunications carrier the same access to design, create, test, and deploy AIN-based services at the service management system, through a service creation environment, that the incumbent LEC provides to itself.

ISSUE NO. 40: Dark Fiber

Statement of Issue. Should MCI have access to GTE's unused transmission media ("dark fiber")?

GTE Position. Dark fiber is not a facility or equipment used in the provision of a telecommunications services. Unbundling of dark fiber would compromise GTE's ability to control and plan for the use of its network.

The Act defines "network element" to include only those facilities that are "used in the provision of a telecommunications service." GTE and other carriers do not "use" dark fiber in their networks--transport circuits must be "lit" to be used to provide telecommunications service. Because dark fiber does not meet the statutory definition of a network element, it is not subject to unbundling. As unused equipment, dark fiber is similar to cable stored on a reel in a warehouse. It has been placed in the ground at a given time only because it makes better economic sense to do so from a network planning and construction cost perspective. Allowing other parties to take advantage of GTE's placement of spare cable disrupts its planning process, thereby raising its costs. GTE prudently deploys fiber to meet its customers' need over a reasonable planning horizon. Compelling GTE to hand over fiber to MCI so that MCI might provide a DS1 private line would deprive GTE of the ability to serve thousands of other customers. It would also fragment GTE's network and strand investments.

Even if the Act generally compelled ILECs to make dark fiber available, important operational and technical feasibility concerns would call for restrictions and special handling procedures. Due to fiber's high capacity, damage to it can cause very serious customer impacts, and fiber is very sensitive to damage. GTE would have to have full control of any MCI connections to dark fiber, and those connections would have to be made at points in the network which minimized the risk of customer service impacts. MCI would have to cover the extra costs of these necessary precautions and additional maintenance activity.

MCI Position. MCI would like access to dark fiber so that it can use its own electronics to light the fiber in order to control capacity and bandwidth to meet its own requirements. The only two tests under the Act for denying unbundled access is that it is either technically infeasible or that it is proprietary. MCI states that GTE has not established that either test is met with regards to dark fiber.

"Network element " is broadly defined in the Act as "a facility or equipment used in the provision of a telecommunications service." Dark fiber is nothing more than another level of transmission hierarchy. Dark fiber is not a spool of cable; it is capacity to provide service. From an engineering perspective, dark fiber falls within dedicated transport and is part of the transmission hierarchy.

Dark fiber is necessary for MCI to expand its network. Without the ability to obtain dark fiber, MCI would be required to compensate GTE for the use of electronics in situations in which MCI can provide all or a portion of such electronics more efficiently itself. MCI's alternative is to construct facilities duplicating those of GTE. Unbundling is designed to avoid this result. GTE should make available unused transmission media to MCI under an Indefeasible Right of Use or license agreement on terms at least equal to those which it affords itself and its affiliates, subsidiaries and others.

Arbitrator's Decision. Dark fiber is a network element and should be unbundled.

Discussion. Under the 1996 Act, "[t]he term 'network element' means a facility or equipment used in the provision of a telecommunications service[.]" 47 USC § 153(45). As GTE notes, the FCC felt it had an insufficient record to define dark fiber as a network element and declined to address the issue. *FCC Interconnection Order*, ¶ 450. The Washington Commission has not made a specific determination as to whether dark fiber constitutes a network element. While there is no dispute that dark fiber is not currently being "used" to provide service, the arbitrator finds that the statute should be broadly interpreted. The purpose of fiber is to be used to provide telecommunications service, as the Commission has recognized.[12] Allowing access to dark fiber is comparable to allowing access to capacity on poles, conduits, or rights-of-way. Issues of technical feasibility can be addressed as they arise. In the meantime, this component of the network should be available to competitors to allow them to provide service.

D. INTERCONNECTION (Issue Nos. 41-43)

ISSUE NO. 41: Dedicated and Common Transport

Statement of Issue. Should GTE be required to provide both dedicated

[12]Although the *Electric Lightwave* decision does not directly address the issue presented here, the opinion refers to a determination by the Commission that dark fiber is a telecommunications service. 123 Wn2d at 545. *See also, In re Digital Direct of Seattle, Inc.*, Docket Nos. UT-910776, UT-910777, Fourth Supplemental Order (April 1992).

and common local transport to MCI on an unbundled basis?

GTE Position. GTE will treat dedicated transport as a single item and make it available out of the access tariff. In addition, common transport is available out of the access tariff. These services are already available under tariff; MCI is already purchasing them. The Act does not require them to be relabeled "network element" just so MCI can argue for a discount. The only discounts to which MCI is entitled under the Act are for resold retail services. Access services are not retail services.

MCI Position. Dedicated and common transport should be unbundled. The parties may have come to an agreement in principle that GTE will use special access transport to extend the trunk group from the interconnection point to the designated tandem; however, the parties do not have agreement on contract language. MCI's contract language should be adopted because it contains the appropriate level of detail to permit implementation and avoid future disputes.

Arbitrator's Decision. Dedicated and common local transport should be unbundled as a network element.

Discussion. The FCC specifically included transport trunks in its definition of the "network element" term. *FCC Interconnection Order,* ¶ 262. In ¶440, the FCC specifically requires incumbents to unbundle transmission facilities. While GTE may prefer to price transport as a service under tariff, transmission should be provided as a network element.

ISSUE NO. 42: Interconnection Points

Statement of Issue. What are the appropriate interconnection points for the transport and termination of traffic?

GTE Position. GTE states that this issue is resolved by Stipulation 207946.1, except for issues of compensation. Subject to mutual agreement the following types of network facility connection are offered:

1. A mid-span fiber meet point within a GTE exchange area;
2. An end office;
3. An access tandem.

Under the Act, interconnection can take place only at points where it is technically feasible. Act, § 251(c)(2)(B). To this end, many factors may frustrate or even prevent interconnection; technical feasibility should not be presumed (and interconnection mandated) just because one carrier may have already interconnected at a given point. This point is recognized in the FCC's Order, which states that

interconnection at a particular point using particular facilities is only "substantial evidence" of technical feasibility at that point or at "substantially similar points in networks employing substantially similar facilities." However, with this need for flexibility in mind, GTE believes that MCI's interconnection needs may be fully met at GTE end offices and access tandem offices, as well as mid-span meet point locations within GTE's service territory.

MCI Position. MCI should be allowed to interconnect with GTE at any technically feasible point in its network, including but not limited to: mid-span fiber meets; entrance facilities; telco closets; end offices; and access tandems. MCI's contract language should be adopted because it contains the appropriate level of detail to permit implementation and avoid future disputes.

Arbitrator's Decision. Stipulation 207946.1 shall be adopted by the arbitrator. MCI should be allowed to interconnect with GTE at any technically feasible point in GTE's network. Interconnection at points other than end offices, access tandem offices, and mid-span fiber meets should be the subject of a bona fide request process.

Discussion. Section 251(c)(2) of the Act requires all incumbent local exchange carriers to provide interconnection "at any technically feasible point." GTE cannot refuse to interconnect at any permissible location under the FCC's rule without considering technical feasibility. However, since technical feasibility is a factual issue depending on the premises and the equipment MCI proposes to install, interconnection at points other than end offices, access tandem offices, and mid-span fiber meets should be the subject of a bona fide request process. There is an inherent presumption of technical feasibility in the statute because GTE has the burden of proving lack of feasibility.

ISSUE NO. 43: Tandem-to-Tandem Switching

Statement of Issue. Should GTE be required to provide tandem-to-tandem switching for the purpose of terminating MCI local and intraLATA toll traffic?

GTE Position. GTE agrees to provide tandem switching if MCI interconnects at the GTE tandem, but will not provide tandem-to-tandem switching until such time as (1) MCI has entered into one of the existing intraLATA toll compensation mechanisms; or (2) signaling and AMA record standards support the recognition of multiple tandem switching events. In this way, the parties can ensure proper billing for inter-tandem switching. Given the agreements contained in Stipulation 207946.1, GTE believes that these issues are resolved.

MCI Position. The parties have reached an agreement in principle on this issue. MCI's contract language should be adopted because it contains the appropriate level of detail to permit implementation and avoid future disputes.

Arbitrator's Decision. Stipulation 207946.1 shall be adopted by the arbitrator. Unbundled tandem-to-tandem switching is technically feasible and should be provided. Requests for tandem-to-tandem switching which varies from the stipulation should be the subject of a bona fide request process.

Discussion. The *FCC Interconnection Order,* ¶ 425, concluded that it is technically feasible to unbundle tandem switching.

ISSUE NO. 44: Terms of Collocation

Statement of Issue. When and in what circumstances should collocation be permitted?

GTE Position. MCI should be permitted to collocate at central offices, service wire centers and tandem switches, not at vaults or manholes, and not at remote units unless a given unit offers routing or rating capability and has sufficient space. GTE may require the implementation of reasonable security measures to protect equipment and facilities of GTE and other collocators.

Under the Act, physical collocation is required unless space limitations call for the use of virtual collocation. Thus, while GTE supports virtual collocation, the arbitrator cannot mandate it in this case except where physical collocation is not possible; arrangements for virtual collocation in other circumstances is beyond the scope of this arbitration. Physical collocation will not be possible in certain GTE facilities, such as manholes and controlled environmental vaults ("CEV"), due to lack of space for the security structures needed for physical collocation. Manholes have insufficient space for even the virtual collocation of equipment, and CEV's are also unlikely to have enough space for virtual collocation. Central offices and tandem sites, on the other hand, should be able to accommodate virtual collocation, and many such locations may have enough space for physical collocation by some number of other carriers.

GTE relies on Stipulations 207947.1.

MCI Position. MCI does not dispute GTE's right to implement reasonable security measures to protect the equipment and facilities of GTE and other collocators; however, GTE can not use such measures to unreasonably limit the use of the collocated space by MCI.

The parties have reached an agreement in principle on this issue. MCI's contract language should be adopted because it contains the appropriate level of detail to permit implementation and avoid future disputes.

Arbitrator's Decision. Stipulation 207947.1 shall be adopted by the arbitrator. Collocation should occur under GTE's federal virtual collocation tariff and its proposed TELRIC-based physical collocation rate.

Discussion. FCC Rules §51.323(i) allows the ILEC to require reasonable security arrangements as part of the collocation process. While it is reasonable that any qualified GTE personnel have access to MCI's collocation space in the event of an emergency, evidence relating to a determination of what constitutes "qualified" has not been submitted in this proceeding, nor has any evidence of what constitutes an "emergency" been submitted.

It is important to keep in mind that collocation is a limited measure, designed to remove technical barriers to new local exchange providers entering the local telephone market. Collocation is not intended as a vehicle by which new entrants may avoid offering true facilities-based competition by building their businesses on the premises of their competitors. If, as the Act intends, new entrants proceed rapidly to true facilities based competition, and a significant number of CLECs enter the market by using GTE's premises, available space would be rapidly exhausted. Thus, collocation is at best an interim measure. Like all interim measures under consideration in this case, its purpose must be twofold: to ease the initial process of building facilities, and to ensure that during this interim period customers are not disadvantaged.

ISSUE NO. 45: Equipment Subject to Collocation

Statement of Issue. What types of telecommunications equipment may be collocated on GTE's premises?

GTE Position. MCI should be permitted to collocate only equipment that is necessary for interconnection or access to unbundled network elements. This would include transmission equipment for termination, concentration equipment and multiplexing equipment. Switching equipment, enhanced services equipment and customer premises equipment should not be allowed.

The fundamental purpose of the "interconnection and access" provisions of the Act is to enable an interconnector to use ILEC network components without having to purchase complete switched access or exchange service. The FCC has recognized the importance of limiting the types of equipment that must be collocated on a LEC's premises to equipment that is necessary and directly related to the competitive provision of basic transmission service. Of primary concern to GTE is MCI's request to

collocate remote switching units or modules ("RSUs" or "RSMS") in GTE's central offices. GTE may at some time be interested in negotiating such arrangements as unregulated real estate transactions, but this topic is clearly outside of the Act and the scope of this arbitration. The Act contains no exception for small switches. MCI may not be allowed to require GTE to accept switching equipment in its facilities.

MCI Position. MCI should be permitted to collocate the amount and type of equipment it deems necessary in its collocated space, including the ability to place remote switching units (RSUs) in the collocation space. GTE should not be permitted to restrict the types of equipment or vendors of equipment to be installed. RSUs perform necessary concentration functions and do not present issues of infeasibility.

Arbitrator's Decision. MCI is permitted to collocate only equipment that is necessary for interconnection or access to unbundled elements. RSUs are switching equipment that should not be collocated.

Discussion. The FCC Interconnection Order, at ¶581, declines to "impose a general requirement that switching equipment must be collocated since it does not appear that it is used for the actual interconnection or access to unbundled network elements." Where, as here, the functionality of the particular equipment is in dispute, the FCC states that "the state commission will determine whether the equipment at issue is actually used for interconnection or access to unbundled elements." Neither the Act nor FCC rules require an incumbent to allow a new entrant to collocate switching equipment inside the incumbent's central office. MCI has the option of using either subloop unbundling alternatives or direct (copper) cable from GTE's central office to connect customers to a nearby MCI switching location. MCI and GTE should explore other alternatives, such as the use of digital cross connect systems (DCS) to eliminate the need for back to back subscriber loop carrier configurations.

ISSUE NO. 46: Interconnection of Collocated Carriers

Statement of Issue. Should GTE allow interconnection between carriers when those carriers are both collocated at GTE premises?

GTE Position. GTE will provide this connection through the purchase of a GTE unbundled network element. GTE states that this issue is resolved by Stipulation 207947.1, except for GTE's request for thirty days advance notice. GTE maintains that even though this issue is resolved by Stipulation 207947.1, arrangements for inter-collocator connections are outside the scope of this arbitration; GTE will negotiate them separately.

Regardless whether GTE has agreed in principle to such inter-collocator connections, the manner of such connections should be subject to security, space management and network integrity considerations. Having GTE make any inter-collocation connections removes the concerns which would arise from collocators themselves running cable across the central office and between cages. The FCC's *Order* allows collocating customers to connect directly to each other *if* the incumbent LEC elects not to provide this connection. Here, however, GTE has agreed to provide this connection through the purchase of a GTE unbundled network element.

MCI Position. GTE should permit a collocating telecommunications carrier to interconnect its network with that of another collocating telecommunications carrier at GTE's premises and to connect its collocated equipment to the collocated equipment of another telecommunications carrier within the same premises.

Arbitrator's Decision. Stipulation 207947.1 shall be adopted by the arbitrator. The FCC's rules require GTE to allow direct connections between collocating telecommunications carriers. GTE shall facilitate interconnection within a reasonable time, but in no case later than 30 days.

Discussion. In *FCC Interconnection Order,* ¶ 594, the FCC concluded that incumbents should be required to permit direct connections between collocators. FCC Rules § 51.323(h) requires incumbents to permit direct connections between collocators.

ISSUE NO. 47: Limits on Collocated Space

Statement of Issue. What limits, if any, may GTE impose upon the use of the collocated space?

GTE Position. In addition to the limits on the type of equipment which may be collocated, collocation activities must also be conducted safely and in a manner which will not damage or degrade GTE's network or other facilities. Proper bonding and electrical surge protection must be in place. Excessive use of electrical power and the use of hot running equipment which would strain environmental control systems cannot be permitted.

MCI Position. GTE may place reasonable security restrictions on access by MCI's employees and designated agents to the MCI collocated space in unmanned GTE offices. In no case should any reasonable security restrictions be more restrictive than those GTE places on its own personnel.

Arbitrator's Decision. GTE may require reasonable security arrangements as part of the collocation process. It is reasonable that security restrictions on access by MCI's employees be no more restrictive than those GTE places on its own personnel.

Discussion. FCC Rules §51.323(i) allows the ILEC to require reasonable security arrangements as part of the collocation process. The record states that MCI would be willing to pay for any additional power or air conditioning necessitated by its collocation. (Berg, Tr. 422-423).

ISSUE NO. 48: GTE Space Reservation

Statement of Issue. Does GTE have the right to reserve central office space for its own use or deny access for lack of physical space reasons?

GTE Position. ILECs have the right to reasonably reserve space for their own use. GTE believes a five year planning horizon for reservation of space is just and reasonable. Although GTE may deny physical or virtual collocation if no space is available, GTE would, in such case, discuss alternative arrangements with MCI that will afford comparable access to the GTE Network.

GTE must retain the ability to use its property for its own legitimate purposes, including the meeting of its service obligations. In some older central offices which formally housed large electro-mechanical switches, GTE may have more space than it will need for future digital switching equipment additions. On the other hand, in many locations counts on having existing space available for its needs. This space should not be taken away from GTE and handed over to competitors; it should not be considered space available for collocation under the Act.

GTE believes that a 5-year planning horizon for reservation of space is just and reasonable. This is especially true given GTE's obligation under State law to serve all customers who request service, that GTE has substantially greater equipment needs (and obligations) than do CLECs, and that GTE must plan not only for its future expansion but also for collocation demands by an unknown number of CLECs.

MCI Position. GTE's position that it should be allowed to retain space for itself based upon a five year planning horizon renders processes for ordering and provisioning collocated space meaningless and should be rejected.

Arbitrator's Decision. GTE's five year time frame is not reasonable and the FCC's standard should apply.

Discussion. The FCC Rules §51.323(f) allows for the reasonable reservation of space. The FCC Order recognized the need for both incumbents and new entrants to reserve space for future use. *FCC Interconnection Order,* ¶586. In ¶604, the FCC prohibited incumbents from reserving space for themselves under terms more favorable than they allow new entrants to reserve space. The FCC's order provides guidance in the reference to new entrants taking space the incumbent "had specifically planned to use" for serving its own customers. The party seeking to reserve space must establish specific planned space use, and the ILEC has the burden of establishing specific planned use if it rejects a new entrant request for present use.

ISSUE NO. 49: Expansion of Facilities

Statement of Issue. Is GTE required to make additional space/capacity available to MCI for collocation if GTE does not have current space available? If so, in what timeframe should GTE make such capacity available?

GTE Position. Nothing in the Act requires GTE to serve the role of a subcontractor or property agent. An ILEC does not have to purchase additional plant in order to respond to a collocation request. GTE will determine the timing of adding capacity to its facilities based on GTE's growth needs. Once it has been determined that additional capacity is required, GTE will factor in collocation forecasts in planning how much capacity should be added. Pursuant to the Act, ILECs must provide for collocation "at the premises of the local exchange carrier." The word "premises" refers to an incumbent LEC's existing space, not the space (or premises) that an ILEC could or might acquire for its own benefit or for the benefit of a third party. GTE should not be required to procure or make available additional space where GTE's existing space is insufficient to accommodate a collocation request. Further, the FCC's rules currently provide that GTE may not "be required to lease or construct additional space to provide for physical collocation when existing space has been exhausted."

MCI Position. GTE should be required to expand its facilities or obtain additional space to make the necessary collocation space available pursuant to requests. GTE should not be excused from offering physical collocation unless there is no practical way of offering additional space by expanding into contiguous space, taking MCI needs into account when planning renovations of existing space, leasing additional space or relinquishing space held for future use.

Arbitrator's Decision. GTE should be required to expand its facilities or obtain additional space to make the necessary collocation space available pursuant to requests. GTE should not be excused from offering physical collocation unless there is no practical way of offering additional space.

Discussion. In *FCC Interconnection Order,* ¶585, the FCC requires incumbents to expand a new entrant's collocation space into any available contiguous space. While the FCC require incumbent LECs with limited space availability to take into account the demands of interconnectors when planning renovations and leasing or constructing new premises, ¶605, specifically declined to require incumbents to expand collocation capacity to accommodate a request for more space from a new entrant at no cost.

The federal Act contains no specific authorization for construction charges; however, if a construction charge would be included in a retail rate to an end-user under tariff GTE may assess that charge.

F. OPERATIONS SUPPORT SYSTEMS (Issue Nos. 50-58)

ISSUE NO. 50: Real-Time Interfaces

Statement of Issue. Should service ordering and provisioning of network element features, functions and resale services be measured by real-time?

GTE Position. GTE will ultimately establish an electronic gateway for on-line ordering and provisioning. National standards and cost recovery mechanisms are not yet developed, and are being worked on by industry groups which include GTE and MCI. Until national standards and cost recovery mechanisms are developed, GTE will provide ordering and provisioning through its National Order Management Center.

MCI Position. GTE should provide MCI with real-time electronic interfaces for transferring and receiving information and executing transactions for all business functions directly or indirectly related to service ordering and provisioning of Network Elements, features, functions, and resale services.

Arbitrator's Decision. GTE shall provide interim ordering and provisioning through its National Order Management Center. GTE shall implement the Ordering Billing Forum (OBF) industry solution immediately subsequent to its specification.

Discussion. GTE has provided MCI with information regarding all of its products and services available by central office or those that are supported from an address. GTE has also provided MCI with its street address guides (SAG) to enable MCI to validate addresses while speaking with customers. (Cox, Tr. 500). The need to develop industry standards is in conflict with MCI's immediate need for real-time operations support systems. It is probably safe to presume that MCI is not alone in its need. The OBF is comprised of industry representatives including GTE and MCI. (Cox, Tr. 516). There is no evidence in the record to suggest that the OBF is dominated by

any one special interest group. The OBF has a target date of the end of the first quarter of 1997 to implement phase two development of the local service request (LSR) solution. The OBF LSR would create a gateway giving MCI real-time interactive ability to perform its pre-ordering. (Cox, Tr. 507-509).

ISSUE NO. 51: Customer Account Information

Statement of Issue. What authorization is required for the provision of customer account information to MCI?

GTE Position. Customer Proprietary Network Information (“CPNI”) must not be disclosed without individual, written authorization. Absent an "affirmative written request by the customer," as called for by the Act, MCI may not be permitted to access GTE or other CLEC customer record information in GTE databases, or to have customer accounts transferred "as is," since this would reveal "CPNI".

MCI’s proposal is that it be allowed to perform "self-certification" that the customer has actually requested to change local carriers from GTE to MCI "as is". Such a procedure invites abuses.

GTE states that the FCC is currently undertaking a rulemaking to determine the appropriate processes for protecting CPNI when a customer changes local service providers. CC Docket No. 96-115. The parameters of the exception to the written authorization requirement set forth in the Act will be determined in that proceeding. Consequently, it is GTE’s intention to comply with whatever procedures the FCC establishes in a final and effective order with respect to release of CPNI to CLECs requesting service.

MCI Position. The Act authorizes disclosure of a customers service record for the purpose of enabling a new carrier to provide service. GTE should not refuse to execute a change "as is" service order for a customer switching to MCI local service.

GTE should provide MCI with access to CPNI without requiring MCI to produce a signed Letter of Agency (LOA), based on MCI's blanket representation that the customer has authorized MCI to obtain such CPNI. In the competitive interexchange market, Preferred Interexchange Carrier (PIC) changes are almost always made upon oral authorization by the customer during a telephone conversation pursuant to a Third-Party Verification method to confirm customer requests to switch carriers. The FCC has sanctioned this method, and it should be allowed in this proceeding.

Arbitrator’s Decision. The MCI position is adopted. Both parties must comply with the CPNI requirements of the Act and related FCC orders.

Discussion. GTE's argument that customer proprietary information (CPNI) must not be disclosed without written authorization from the customer in order to protect the individual is unconvincing. This proposal creates an obstacle for the customer to obtain information to which he/she is entitled to receive. The ILEC is a custodian of the information which belongs to the customer. There are other ways to prevent the marketing abuses which GTE may be concerned about; however, these potential abuses will become a concern for all telecommunications carriers in a short time. When they do, there is little doubt that these parties will agree upon a scripted verbal disclosure to ensure that the customer has made an informed decision regarding the disclosure of CPNI. In the meantime, the PIC change method adequately protects both the customer and the ILEC from unfair business practices.

ISSUE NO. 52: OSS Systems Access

Statement of Issue. Should GTE be required to provide MCI direct access to GTE's OSS systems through electronic interfaces?

GTE Position. GTE will provide nondiscriminatory access to GTE OSS functions that are available to GTE, but it will only provide on-line access to the GTE systems themselves through a nationally standardized gateway. Direct access is not required, and should not be ordered. OSS functions should be accessed through a nationally standardized gateway. Although national standards have not been set, GTE is actively working toward implementing a gateway. Once national standards are in place, GTE will modify its gateway if necessary and if requested by MCI.

MCI Position. Operational interfaces must be provided at parity with GTE. Nondiscriminatory access necessarily includes access to the functionality of any internal gateway systems which GTE employs in performing pre-ordering, ordering, provisioning, maintenance, repair and billing functions for itself. GTE should provide MCI with real-time electronic interfaces for transferring and receiving information and executing transactions for all business functions directly or indirectly related to service ordering and provisioning of Network Elements, features, functions, and resale services.

Arbitrator's Decision. GTE must provide direct access to its OSS through electronic interfaces pursuant to the FCC's Order.

Discussion. ILECs are required to provide access to OSS functions under the same terms and conditions that they provide these services to themselves. *FCC Interconnection Order,* ¶ 316. In ¶ 523 the FCC states that access includes access to the same information as the incumbent provides to itself.

ISSUE NO. 53: Implementation of OSS Electronic Interfaces

Statement of Issue. On what basis should OSS electronic interfaces be implemented?

GTE Position. GTE has identified workable means to provide OSS electronic interfaces, but the timing of implementation and the responsibility of MCI for the cost remain open issues. Long-term implementation of securing electronic interfaces to GTE's OSS functions should be reasonably based upon the actual work required to create the necessary electronic bonding between the systems and based on a nationally standardized gateway for all CLECs. MCI should pay all costs.

MCI Position. GTE should be ordered to immediately implement an electronic interface. No ongoing human intervention should be permitted in order to achieve implementation. OSS systems should be implemented must provide parity to the new entrant and must be nondiscriminatory. Parity should be established in terms of access and in terms of performance. Improvements in GTE's systems should be offered to serve the needs of new entrants as well.

Arbitrator's Decision. GTE should immediately implement an electronic interface to its OSS functions.

Discussion. The FCC Order establishes a January 1, 1997 deadline for implementation of an electronic interface to ILEC OSS functions:

> In all cases, however, we conclude that in order to comply fully with section 251(c)(3) an incumbent LEC must provide, upon request, nondiscriminatory access to operations support systems functions for pre-ordering, ordering, provisioning, maintenance and repair, and billing of unbundled network elements under section 251(c)(3) and resold services under section 251(c)(4). Incumbent LECs that currently do not comply with this requirement of section 251(c)(3) must do so as expeditiously as possible, but in any event no later than January 1, 1997. We believe that the record demonstrates that incumbent LECs and several national standards-setting organizations have made significant progress in developing such access. This progress is also reflected in a number of states requiring competitor access to these transactional functions in the near term. Thus, we believe that it is reasonable to expect that by January 1, 1997, new entrants will be able to compete for end user customers by obtaining nondiscriminatory access to operations support systems functions.
>
> The FCC Order was released on August 8, 1996. GTE has had a

sufficient opportunity to inform itself regarding the requirements of the Order and to prepare its compliance with its terms and conditions.

ISSUE NO. 54: OSS Processes for UNE

Statement of Issue. Should MCI have access to GTE's OSS processes through electronic interfaces for unbundled elements?

GTE Position. MCI will be able to order services for unbundled network elements directly from GTE through an electronic interface. GTE will bill unbundled elements via the same system used for end user billing. The maintenance OSS which GTE will use for MCI are essentially the same as those GTE uses to provide its own local service repair.

MCI Position. GTE should provide "electronic bonding" between GTE and MCI for those interfaces where real-time, transparent access to data and systems transactions are required in order for GTE to support MCI, and for MCI to provide features and services to subscribers.

Arbitrator's Decision. *See* Issue No. 53, Arbitrator's Decision.

ISSUE NOS. 55, 56: Billing and Recording Usage Services

Statement of Issue. Should GTE be required to provide billing and usage recording services for resold services, and if so: (a) what terms and conditions apply to such terms; and (b) how should the costs of providing these services be recovered, and from whom?

GTE Position. At the present time, the parties are negotiating a resolution of a number of business process issues. The terms and conditions applicable to such functions are being determined jointly, on an outgoing basis. GTE will provide MCI equivalent recording. If necessary, GTE will explore the possibility of enhancing its existing systems to provide additional services to MCI, as long as MCI commits to paying the associated costs

Any enhancement to GTE's billing system that may be required to meet or to satisfy MCI's demand must be paid for by MCI. Any such enhancement would inure completely to the benefit of MCI with no benefit to GTE at all. Of course, if other competitive local exchange carriers choose to use this

same billing system, they too should share in the cost of the system. GTE supports a means of refunding to MCI any amounts paid which may subsequently be shared with other CLECs.

MCI Position. While MCI and GTE agree that GTE should provide billing and usage recording, they have been unable to agree on specific terms. The industry standard for wholesale billing is a Carrier Access Billing System ("CABS") or an Integrated Access Billing System ("IABS"). This standard is in the process of being adopted as a long-term solution, therefore, it should be adopted as an interim solution. It is burdensome to require MCI to implement GTE's proprietary Customer Billing Support System ("CBSS") when the anticipated standard system is readily available.

GTE should format each bill for Connectivity Charges ("Connectivity Bill") in accordance with CABS or SECAB standard. Each service purchased by MCI should be assigned a separate and unique billing code in the form agreed to by the parties and such code should be provided to MCI on each Connectivity Bill. Measurement of usage-based charges Connectivity Charges should be in actual conversation seconds. The total conversion seconds per chargeable traffic types should be totaled for the entire monthly bill cycle and then rounded to the next whole minute.

Recovery of costs for development of billing and other OSS functions should be done on a competitively neutral manner. This can be accomplished by setting prices for the necessary systems at TELRIC, and requiring GTE to impute such prices to itself in the provision of retail services.

Arbitrator's Decision and Discussion. It is clear that national standards are the most effective long term solution. Until that event occurs there is a dilemma: either one party or the other is going to incur costs in order to implement a short term solution. It is not equitable to allow GTE to retain the billing and usage recording services to which it is accustomed *and* to receive compensation for the costs associated with providing service. Accordingly, the GTE billing and usage recording services shall be implemented between the parties as a short term solution; however, GTE shall receive no compensation for the costs associated with providing the functions. The parties are free to negotiate an arrangement which provides for compensation. In the long term, GTE shall implement a national standard as soon as consensus is achieved, and MCI shall thereafter pay to GTE whatever compensation is appropriate.

ISSUE NO. 57: Implementation of Ordering and Provisioning

Statement of Issue. After interconnection occurs, what time intervals for ordering and provisioning should be implemented?

GTE Position. GTE will provide ordering and provisioning to all CLECs on a non-discriminatory basis within reasonable time frames that can only be standardized after implementation and an appropriate period of use. GTE will agrees to implement ordering and provisioning in a reasonable time.

MCI Position. Installation intervals should be part of an interconnection agreement negotiated between the parties. MCI sets forth its proposed cycle time intervals for ordering and provisioning of resale services in its proposed Contract, Article VIII, § 2.5.1.9.

Arbitrator's Decision. GTE's position is adopted by the arbitrator.

Discussion. The Commission's "preferred outcome" incorporates the view that "installation intervals and other performance standards should be part of an interconnection agreement *negotiated* between the affected parties". *See* Docket No. 941464, *Ninth Supplemental Order*, at 8. The Commission has rules governing conformance to service specifications. This issue must be resolved in unison with Issue No. 58. There is little to be achieved by implementing performance and quality measures without accompanying remedial procedures. At this early stage of interconnecting networks it would be counterproductive to impose performance and quality measures which are more imposing than those which presently exist and which are not the result of a negotiated agreement between the parties. This perspective will certainly change over time.

ISSUE NO. 58: Performance Standards

Statement of Issue. Should there be remedial measures for substandard performance?

GTE Position. GTE's proposed agreement provides for a dispute resolution procedure that is entirely sufficient to ensure that GTE will be held responsible for meeting its obligations under the Agreement. Liquidated damages only serve to disincent the parties from using dispute resolution procedures. Moreover, the liquidated damages proposed by MCI are not supported by any analysis of MCI's actual losses. As such, they are unlawfully punitive.

MCI Position. GTE must provide at least the same quality to other carriers that it provides to itself. Performance standards should be part of an interconnection agreement negotiated between the parties. Performance standards are common in contracts and have been used in the local telecommunications context where competition exists. It is in GTE's best interest to serve its retail customers prior to serving a resale customer. Furthermore, it is difficult to quantify damage to MCI for each incident, even though the cumulative effect is to put MCI at a service quality disadvantage.

MCI should receive a quantifiable credit in order to deter GTE from providing substandard service and to partially compensate MCI for its known but not readily quantifiable damages. MCI should also have the right to elect to seek injunctive relief and other equitable remedies against GTE.

GTE should produce monthly reports comparing the level of service it provides to MCI with the level of service it provides to itself and the average level of service it provides across the industry as a whole. If GTE is unable to state what its standards of parity are for inclusion in the contract , then MCI's standards should be used as a default/proxy.

Arbitrator's Decision.

If MCI wants more assurances of performance, it should make a request for a higher level of service under the bona fide request process.

Discussion. Given the incumbent's economic incentives to hamper new entry into the market, there is a need which is not present in most commercial transactions for a countervailing economic incentive. An incentive in the form of specific standards and remedial measures would be consistent with the Act, would help achieve a self-policing relationship, and probably would not result in any less parity than the absence of an incentive. Another approach to the situation is the Commission's enforcement of parity requirements and its quality of service rules. The Commission has rules governing conformance to service specifications. The latter is the better approach for "standard" service at the interim rates.

G. OPERATOR SERVICES AND DIRECTORY ASSISTANCE (Issue Nos. 59-65)

ISSUE NO. 59: Routing Operator Services ("OS") / Directory Assistance ("DA")

Statement of Issue. Should GTE be required to route operator services and directory assistance calls to MCI's platforms where MCI purchases unbundled network elements and resold services?

GTE Position. In accordance with the Act, GTE will sell those OS/DA items that it sells now at retail. GTE is not required to unbundle portions of OS/DA that are not sold separately at retail. GTE will provide those aspects of OS/DA that it currently offers at retail along with local service at just and reasonable rates for its avoided costs.

GTE has voluntarily agreed to unbundle GTE-provided OS/DA per Stipulation 208128.1. However, routing of OS/DA to MCI platforms requires customized routing, which is not technically feasible. Switch routing capability is not an unbundled network element offered by GTE on an ala carte basis. Current switch limitations would require adding new capacity and conditioning existing switches. A long-term standard industry solution must be established.

MCI Position. MCI requests a selective routing service, which would automatically route all OS and DA calls to MCI's platform. GTE must unbundle the functionalities for OS and DA in connection with network elements and resold services, to the extent that it is technically feasible.

Arbitrator's Decision. GTE must unbundle the functionalities for OS and DA in connection with network elements and resold services, to the extent that it is technically feasible.

Discussion. The *FCC Interconnection Order,* ¶ 418, concludes that customized routing is technically feasible in many LEC switches. ¶ 536 requires ILECs to unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible. An ILEC must prove to the Commission that customized routing *in a particular switch* is not technically feasible.

ISSUE NO. 60: Directory Assistance Database Access

Statement of Issue. Should GTE be required to provide access to its directory assistance database so that MCI may provide its customers with MCI branded directory assistance?

GTE Position. GTE will allow MCI to have access to GTE's listing information once an electronic gateway is developed. Until that gateway is developed, GTE will provide MCI with directory assistance information on magnetic tape, with updates provided every business day. Initial load, update, and assumed usage cost for processing and distribution will be charged to MCI. GTE offers to license the usage of its listings solely for the purpose of local directory assistance.

It is not technically feasible for GTE to provide third party access to its DA database at this time. Serious problems arise when multiple users have access to a secured database. A gateway and other measures are necessary to safeguard the security and integrity of the data. At this time, there are no vendor endorsed, industry accepted solutions to this problem. Once the technical issues are resolved, the costs associated with development, deployment and ongoing operation must be identified. While GTE has, in good faith, initiated the

development of such a gateway, whatever the eventual cost may be, it should be paid for by MCI (and other parties requesting access) because MCI, and not GTE, will benefit from the access.

MCI Position. MCI requests that directory assistance services provided by GTE to MCI subscribers be branded to include front-end, back-end, and non-branding, as determined by MCI. MCI states that it should also have the option of providing its own branding by having its own access to GTE's directory assistance database. New entrants must have access to the same level access and service as the incumbent LEC, regardless of whether the LEC offers the service to its own subscribers or not. The cost of unbundling such services should be recovered through prices based on TELRIC.

Arbitrator's Decision. GTE must provide access to its directory assistance database in a way that enables MCI to provide directory assistance under its brand name. The costs incurred in complying with a request for unbranding or rebranding shall be recovered through prices based on TELRIC.

Discussion. FCC Rule §51.613(c) provides: "Where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale."

The FCC Order concludes that branding is important to development of a competitive market:

> "We therefore conclude that where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller branding requests presumptively constitutes an unreasonable restriction on resale. This presumption may be rebutted by an incumbent LEC proving to the state commission that it lacks the capability to comply with unbranding or rebranding requests. We recognize that an incumbent LEC may incur costs in complying with a request for unbranding or rebranding. Because we do not have a record on which to determine the level of fees or wholesale pricing offsets that may reasonably be assessed to recover these costs, we leave such determinations to the state commissions." *FCC Interconnection Order,* ¶ 971.

ISSUE NO. 61: Directory Assistance Routing

Statement of Issue. Can MCI route directory assistance calls to either the MCI directory assistance service platform or the GTE directory service platform?

GTE Position. MCI requests that GTE unbundle its switch so that MCI can route its customers to MCI's operator services (OS) and directory assistance (DA) platforms, with dedicated trunk groups linked to any interexchange carrier (IXC) MCI designates. This requires customized routing, which is not technically feasible. More specifically, to provide this routing, GTE would be required to install separate trunk groups to route calls to MCI's platforms, and unique line class codes (LCC) would have to be assigned to the lines of MCI's customers in order to "tag" the calls so that the switch recognizes those calls that must be routed to MCI's trunk groups. Because GTE has different types and generations of switches, this issue must be addressed on a case-by-case basis. The use of LCCs will destroy the ability to bill for that traffic. MCI must pay for the traffic it generates.

In balancing the interests of the parties, GTE will agree to provide customized routing as an unbundled offering (as opposed to a modification of a resold retail service) on an interim, short-term basis (e.g., using line class codes on a nondiscriminatory basis where available) upon the following terms and conditions: (1) MCI shall submit reasonable requests and identify those geographic areas where it wants customized routing; (2) within a reasonable time after receiving MCI's notification, GTE will identify its switches serving in the designated area and advise MCI whether customized routing is technically feasible for those switches; (3) if customized routing is technically feasible, GTE will make such routing available within a reasonable time period; (4) MCI shall pay all the costs associated with its selective routing request; and (5) the parties will work to establish a long-term industry solution. Unbranding of GTE services is also an option for MCI.

MCI Position. GTE should provide for the routing of directory assistance calls dialed by MCI subscribers directly to either the MCI DA service platform or GTE DA service platform as specified by MCI.

Arbitrator's Decision. GTE should provide for the routing of directory assistance calls dialed by MCI subscribers directly to either the MCI DA service platform or GTE DA service platform as specified by MCI, to the extent that it is technically feasible.

Discussion. The *FCC Interconnection Order,* ¶ 418, concludes that customized routing is technically feasible in many LEC switches. ¶ 536 requires ILECs

to unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible. An ILEC must prove to the Commission that customized routing *in a particular switch* is not technically feasible

ISSUE NO. 62: Customized Routing Via Line Class Codes ("LCC")

Statement of Issue. Should GTE be required to provide MCI with Line Class Codes (LCCs) for customized routing?

GTE Position. Line Class Codes are not themselves network elements, but are the line attributes necessary for customized routing. This requires customized routing, which is not technically feasible.

MCI Position. LCCs are table values in the database of GTE's switch that provide the necessary information to permit customized call routing. The FCC defines local switching capability network elements as including "all features, functions and capabilities of the switch, which include, but are not limited to" several functions including "custom calling, custom local area signaling service features, and Centrex, as well as any technically feasible customized routing functions provided by the switch." *FCC Interconnection Order,* ¶ 51.319(c)(1)(I). As part of GTE's unbundling of switching functions, MCI should be provided with LCCs by GTE so that MCI will be able to provide customized call routing for its customers, at least as an interim measure. GTE's refusal to provide LCCs leaves MCI without any alternative for customized call routing for a variety of call types, including: 911 calls, O+ and O-calls, 411 Directory Assistance calls, interLATA and intraLATA calls, and certain 800 and 888 calls.

Arbitrator's Decision. MCI's position is adopted by the arbitrator.

Discussion. The *FCC Interconnection Order,* ¶ 418 requires the incumbent to prove that customized routing in a particular switch is not technically feasible.

ISSUE NO. 63: Electronic Data Transfer

Statement of Issue. Should GTE be required to provide directory listing information to MCI via electronic data transfer on a daily basis so that MCI may update its directory assistance database and provide its customers with MCI branded directory assistance?

GTE Position. GTE will allow MCI to have access to GTE's listing information once an electronic gateway is developed. Until that gateway is developed, GTE will provide MCI with directory assistance information on magnetic tape, with

updates provided every business day.

MCI Position. GTE has agreed to offer access to its entire DA platform as bundled service, and GTE has also agreed to allow read-only access to the DA database and sub-databases. However, GTE states that it will only offer directory assistance database tapes and daily updates to MCI until the GTE gateway is developed, at which time GTE proposes to stop providing the tapes and updates. Pursuant to the Act, GTE must provide its subscriber list information to any person upon request for the purpose of publishing directories in any format. Providing computer or telephone access to unbundled directory listings constitutes a "publishing format" in this day and age.

GTE access to information must include data for the subscribers of the independent companies whose territory is adjacent to GTE. GTE must provide the same list to MCI as it provides to its own directory publisher, including, as applicable, the independent companies' listings.

Arbitrator's Decision. GTE shall provide MCI with directory assistance information on magnetic tape with updates provided every business day until its gateway is fully operational. At that time, MCI may utilize the BAR Process if it prefers to receive updates on magnetic tape. GTE must provide MCI with the same level of access to directory databases and updates as it provides to its own directory assistance unit.

ISSUE NO. 64: Branding of Operator Services

Statement of Issue. Should GTE be required to accommodate MCI's branding requests concerning operator services?

GTE Position. Customized routing is required prior to rebranding. GTE's obligations extend to selling its existing services, not to creating new ones. Insofar as MCI's request relates to resold retail services, the Act does not obligate GTE to change its services for MCI's benefit. In any event, significant network, operational and cost issues would be presented, and MCI makes no offer to compensate GTE for them.

It is not technically feasible to provide unique branding. If and when customized routing is implemented, GTE further agrees to uniquely brand on behalf of any CLEC. In the interim, GTE has offered to unbrand its directory assistance services in a resale environment for use by MCI (where it is lawful to do so).

MCI Position. MCI requests that GTE brand any and all such services at all points of customer contact as MCI services, or otherwise as MCI may specify, or be provided with no brand at all, as MCI shall determine. If GTE is truly unable to provide

such branded services, then GTE must remove its brand from the directory assistance and operator services that it provides itself. GTE has agreed to do this; however, this solution is acceptable to MCI only if and where branding is impossible, and then only on a short-term basis.

Arbitrator's Decision. GTE should be required to accommodate MCI's branding requests concerning operator services, if it is technically feasible to do so.

Discussion. FCC Rule §51.613(c) provides: "Where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller unbranding or rebranding requests shall constitute a restriction on resale."

The FCC Order concludes that branding is important to development of a competitive market:

> "We therefore conclude that where operator, call completion, or directory assistance service is part of the service or service package an incumbent LEC offers for resale, failure by an incumbent LEC to comply with reseller branding requests presumptively constitutes an unreasonable restriction on resale. This presumption may be rebutted by an incumbent LEC proving to the state commission that it lacks the capability to comply with unbranding or rebranding requests. We recognize that an incumbent LEC may incur costs in complying with a request for unbranding or rebranding. Because we do not have a record on which to determine the level of fees or wholesale pricing offsets that may reasonably be assessed to recover these costs, we leave such determinations to the state commissions." *FCC Interconnection Order,* ¶ 971.

ISSUE NO. 65: Routing of Local Operator Services

Statement of Issue. Can MCI route local operator services to either the MCI operator service platform or the GTE operator service platform?

GTE Position. MCI's request requires customized routing, which is not technically feasible.

MCI Position. GTE should provide for the routing of local operator services calls dialed by MCI subscribers directly to either the MCI operator service platform or the GTE operator service platform as specified by MCI.

Arbitrator's Decision. GTE should provide for the routing of directory assistance calls dialed by MCI subscribers directly to either the MCI DA service platform or GTE DA service platform as specified by MCI, to the extent that it is technically feasible.

Discussion. The *FCC Interconnection Order,* ¶ 418, concludes that customized routing is technically feasible in many LEC switches. ¶ 536 requires ILECs to unbundle the facilities and functionalities providing operator services and directory assistance from resold services and other unbundled network elements to the extent technically feasible. An ILEC must prove to the Commission that customized routing *in a particular switch* is not technically feasible

H. DIRECTORIES (Issue Nos. 66-68)

ISSUE NOS. 66, 67: Distribution of Directories

Statement of Issue. On what basis should GTE be required to distribute directories to MCI customers, and should GTE make secondary distributions of directories to MCI's customers without charge?

GTE Position. These issues are resolved by Stipulation 207139.1.

MCI Position. The parties have reached agreement in principle on initial and secondary distribution of directories. MCI's contract language should be adopted because it contains the appropriate level of detail to permit implementation and avoid future disputes.

Arbitrator's Decision. Stipulation 207139.1, paragraphs (2) and (3) are adopted by the arbitrator.

Discussion. The language of the stipulation is inconsistent with the language of MCI's best final offer; thus, it controls.

ISSUE NO. 68: Branded Service Information Pages

Statement of Issue. Should GTE provide directory pages to MCI as GTE has for its own use for branded service information?

GTE Position. These issues are resolved by Stipulation 207139.1.

MCI Position. The parties have reached agreement in principle on this issue, including MCI's logo. MCI's contract language should be adopted because it contains the appropriate level of detail to permit implementation and avoid future disputes.

Arbitrator's Decision. Stipulation 207139, paragraph (1) is adopted by the arbitrator. GTE will provide MCI with a reference on the cover of the directory pursuant to the BAR Process.

I. PARITY AND SERVICE STANDARDS (Issue Nos. 69-73)

ISSUE NO. 69: Presubscription Dialing Parity

Statement of Issue. Should GTE be required to provide dialing parity through presubscription, and if so, on what schedule?

GTE Position. The FCC Order 96-333, Rules 51.209 through 51.215 address toll dialing parity requirements of all LECs. GTE will implement toll dialing parity where it is technically capable throughout a state by August 8, 1997. Nontechnically capable offices will be converted in conjunction with and according to the interLATA equal access schedule.

GTE already had an approved equal access tariff in place in Washington. The Commission has before it a docket to assure that competitively neutral practices are undertaken by all LECs, both incumbent and competitive. The arbitrator should not further address this issue at this time.

MCI Position. The parties have no substantive disagreement on GTE's duty to provide dialing parity pursuant to tariffs filed in Docket No. UT-960728. However, GTE's proposed implementation date constitutes an unacceptable delay and it is inconsistent with prior representations to the Commission. MCI proposes the previously mentioned February 4, 1997, due date for equal access except for central offices that are "non-technically capable," which should be converted in conjunction with and according to the existing interLATA equal access schedule.

In addition to the timetable, MCI states that there remain open and unresolved issues regarding GTE's business practices. MCI proposes ten specific safeguards to ensure that dialing parity is implemented in a competitively neutral fashion.

Arbitrator's Decision. The GTE position is adopted by the Arbitrator as being reasonable.

ISSUE NO. 70: PIC Changes

Statement of Issue. How should PIC changes be made for MCI's local customers and should GTE identify PIC charges separately?

GTE Position. GTE considers this issue resolved. GTE will reject PIC changes for MCI customers unless received from MCI. MCI should use the existing mechanized process for long-distance PIC changes. Detail is provided on the CLEC bill so that the CLEC can identify the specific charges for rebilling to their end user customers. GTE will accept the Local Service Request (LSR) form, rather than the simplified change form demanded by MCI, or the existing mechanized process originally suggested by GTE. GTE promotes the LSR form as a standard for a variety of transactions, which will benefit both companies.

MCI Position. It appears that MCI and GTE agree that GTE will reject PIC changes for MCI customers unless they come from MCI and that GTE will properly bill or provide the details so that MCI can bill end user customers for PIC change charges.

Arbitrator's Decision. There is no disagreement between the parties on this issue that requires resolution by the arbitrator.

ISSUE NO. 71: Service, UNE, and Interconnection Parity

Statement of Issue. Should the contract include terms which require GTE to provide resold services, unbundled network elements, ancillary functions and interconnection on terms that are at least equal to those GTE uses to provide such services and facilities to itself?

GTE Position. The Act requires that GTE not discriminate between competitive providers in providing services for resale and access to unbundled elements. GTE agrees to provide service to CLECs in a nondiscriminatory manner according to the quality levels that GTE provides in the normal course of business.

This issue appears to mix two points. The first is whether GTE is required to provide interconnection, resold services, and unbundled elements to CLECs at the same quality standards that apply to GTE's own services, including its internal planning. The second is whether, in the course of providing non-discriminatory services, GTE must implement processes (such as access to OSS) on a basis that treats MCI better than GTE treats itself, whenever MCI requests it.

The first matter, concerning standards, should not be considered an issue remaining for resolution in this arbitration. GTE has already agreed to provide service quality to CLECs that is nondiscriminatory and equal to that which GTE provides to itself and its affiliates.

Existing networks were built to accommodate only one carrier, and alterations to networks will be required to accommodate other carriers. The costs of such accommodations, however, should be borne by the cost-causer, not the ILEC. Thus, to the extent modifications to GTE's network are necessary to meet MCI's requirements, and assuming GTE is legally obligated to make them, MCI must pay for such modifications.

MCI Position. GTE must provide services that are equal in quality, are subject to the same conditions, and are provided within the same provisioning time intervals. The quality of access to an UNE must be superior to that which GTE provides to itself when MCI requests this and it is technically feasible. In addition, GTE's performance under the Agreement should provide MCI with the capability to meet Performance Standards that are at least equal to the highest level that GTE provides or is required to provide by law or its own internal procedures, whichever is higher.

Arbitrator's Decision. The contract should include terms which require GTE to provide resold services, unbundled network elements, ancillary functions and interconnection on terms that are at least equal to those GTE uses to provide such services and facilities to itself. If MCI requests a higher-than-standard level of access or quality of element, GTE must accommodate the request to the extent that it is technically feasible pursuant to the BAR Process.

Discussion. Section §251(c)(2) of the Act requires all incumbent local exchange carriers to provide connections "at a quality level at least equal to the connections the incumbent provides for itself or other carriers." §251(c)(3) and §251(c)(4) simply prohibit discrimination.

FCC Rules §51.311 governs the relative quality of access and network elements. It directly prohibits incumbents from discriminating in their own favor. Unless a carrier requests a higher-than-standard level of service or a lower-than-standard level of service, an incumbent must provide the same level of service to all carriers. To the extent technically feasible, the standard level of service an incumbent provides to other carriers must be as high as the level of service the incumbent provides to itself. To the extent technically feasible, an incumbent must accommodate a request for a higher-than-standard level of service. The incumbent has the burden of persuading the state commission that it is not technically feasible to comply with the rule.

The Act requires parity at the standard price and allows a new entrant to request a higher level of service. A higher level of service implies a higher cost of service, and GTE cannot discriminate in favor of MCI, so a correspondingly higher price is implicit in MCI's proposal. Also implicit is a bona fide request process to define the terms of any higher level of service. With those implicit considerations, MCI's position is consistent with the Act.

ISSUE NO. 72: Operational Interface or Process Testing

Statement of Issue. What type of testing is GTE required to perform on any operational interface or process?

GTE Position. GTE will perform any testing of any operational interface or process that it performs for itself. GTE will perform any other technically feasible testing upon MCI's agreement to pay for the testing on a time and materials basis.

MCI Position. GTE should cooperate with MCI upon request to ensure that all operational interfaces and processes are in place and functioning properly and efficiently, as determined by MCI. MCI may request cooperative testing as deemed appropriate by MCI to ensure service performance, reliability, and customer serviceability.

Arbitrator's Decision. The GTE position is adopted by the arbitrator.

Discussion. The MCI position proposes a higher-than-standard of service which GTE provides for itself. Accordingly, any relevant request by MCI shall be resolved pursuant to the BAR Process.

ISSUE NO. 73: UNEs, Ancillary Functions, and Resale Services Testing

Statement of Issue. What type of testing is GTE required to perform on UNE, Ancillary Functions, and services for resale?

GTE Position. This issue is resolved in part by Stipulation 207981.1. GTE will perform any additional testing for any unbundled network element or ancillary function that it performs for itself. For "designed services" (i.e., services other than basic voice grade service), GTE agrees to perform loop testing to design specifications. However, GTE does not routinely test every non-designed new loop for itself. GTE will perform any other technically feasible testing upon MCI's agreement to pay for the testing on a time and materials basis.

MCI Position. At MCI's request, GTE should provide: (a) access to the Network Element sufficient for MCI to test the performance of that Network Element to MCI's satisfaction; (b) perform tests to confirm acceptable performance and provide MCI with documentation of test procedures and results acceptable to MCI; and (c) perform all pre-service testing prior to the completion of the order, including testing on local service facilities and switch translations, including, but not limited to, verification of features, functions, and services ordered by MCI.

Arbitrator's Decision. The GTE position is adopted by the arbitrator.

Discussion. The MCI position proposes a higher-than-standard level of service than GTE provides for itself. Accordingly, any such request by MCI shall be resolved pursuant to the BAR Process.

J. NUMBER PORTABILITY (Issue No. 74)

ISSUE NO. 74: Interim Number Portability ("INP")

Statement of Issue. What methods of interim number portability should GTE be required to provide?

GTE Position. GTE should provide INP through remote call forwarding and direct inward dialing. GTE will also provide INP through LERG. Reassignment involving six-digit routing only where (i) at least 70 percent of an entire NXX code is taken by no more than three MCI subscribers or (ii) at least 45 percent of an entire NXX code is taken by one subscriber, and the remainder is reserved by that subscriber. Other methods of number portability are not technically feasible, given the imminent transition to permanent number portability.

MCI Position. MCI and GTE appear to be in agreement that the principle methods of INP will be remote call forwarding and direct inward dialing. In addition, the parties appear to be in agreement in principle that LERG reassignment may be appropriate in special circumstances where a customer comprises all, or substantially all, of the assigned numbers in an existing GTE central office. However, it does not appear that GTE is willing to provide directory number route indexing ("DNRI") as an alternative means of interim local number portability. MCI is only requesting DNRI if permanent LNP is delayed by GTE. Thus, the arbitrator's decision should provide that if GTE is unable to meet the deadline of the first quarter of 1998 for permanent number portability, it should begin to offer DNRI prior to that deadline.

Arbitrator's Decision. GTE's position is adopted by the arbitrator. DNRI shall be available to MCI as an alternative means of INP pursuant to the BFR Process.

Discussion. Without regard as to whether GTE fails to meet the deadline for permanent number portability, the alternative means of providing interim number portability remain interim solutions. The arbitrator is not willing to impute any characterization of the parties commitment to implementing permanent LNP based upon the speculative failure to meet a prospective deadline.

K. POLES, DUCTS AND RIGHTS-OF-WAY (Issue Nos. 75-78)

ISSUE NO. 75: Access to Poles, Ducts, Conduits and Rights-of-Way

Statement of Issue. Should MCI have access to GTE's poles, ducts, conduits and rights-of-way at parity with GTE?

GTE Position. Subject to availability, GTE will provide any telecommunications carrier requesting access with non-discriminatory access to any pole, duct, conduit or right of way owned or controlled by GTE subject to the terms and conditions of the agreement between the two companies. The requirements of nondiscriminatory access does not mean that GTE's rights as an owner of poles and conduits must be relegated to the status of a mere license. Rather, nondiscriminatory access requires that an owner of poles or conduits treat equally all companies seeking access.

MCI Position. GTE should make poles, duct, conduits and ROW available to MCI upon receipt of a request for use, providing all information necessary to implement such a use and containing rates, terms, and conditions, including, but limited to, maintenance and use in accordance with this Agreement and at least equal to those which it affords itself, its Affiliates and others.

Where GTE has any ownership or other rights to ROW to buildings or building complexes, or within buildings or building complexes, GTE should offer to MCI: the right to use any spare metallic and fiber optic cabling within the building or building complex; the right to use any spare metallic and fiber optic cable from the property boundary into the building or building complex; the right to use any available space owned or controlled by GTE in the building or building complex to install MCI equipment and facilities; ingress and egress to such space; and the right to use electrical power at parity with GTE's rights to such power.

Arbitrator's Decision. MCI should have access to GTE's poles, ducts, conduits and rights-of-way at parity with GTE.

Discussion Section 251(b)(4) of the Act requires all local exchange carriers to additionally provide other carriers with access to poles, ducts, conduits, and rights-of-way on rates, terms, and conditions consistent with the Act. §224(f)(1) requires incumbents to provide nondiscriminatory access to any pole, duct, conduit, or right-of-way they own or control. In ¶1157 of the FCC Order, the FCC interprets "nondiscriminatory" as meaning parity. In ¶1170 the FCC concludes that a telecommunications service provider must treat other telecommunications service providers at parity.

ISSUE NO. 76: Extent of Rights-of-Way

Statement of Issue. Does the term "rights-of-way" in Act § 224 include all possible pathways for communicating with the end user?

GTE Position. There is no evidence that Congress intended to expand the meaning of the term right-of-way, as used in § 224, to include all possible pathways to the end user customer such as entrance facilities, cable vaults, equipment rooms and telephone closets.

MCI Position. The FCC has stated that the access obligations of § 224(f) apply when, as a matter of state law, the utility owns or controls the pathway.

Arbitrator's Decision. GTE's position is adopted by the arbitrator.

Discussion. The FCC Order defined "premises" to include structures that house incumbent network facilities on public rights-of-way. *FCC Interconnection Order,* ¶ 573. In ¶ 1185 the FCC defined "rights-of-way" more narrowly and it cautioned against an overly broad interpretation. Furthermore, the rationale in support of a broader definition is lessened to the extent that the subject "premises" is a GTE facility because MCI may pursue collocation of interconnection equipment.

ISSUE NO. 77: Reserved Space on Poles, Ducts, Conduits and Rights-of-Way

Statement of Issue. May GTE reserve space for its future use on/in its poles, ducts, conduits and rights-of-way?

GTE Position. As a public policy matter, GTE has special service obligations by virtue of its status as the provider of last resort. Because GTE must be able to serve new customer readily, it must always have reserve capacity. Additionally, a determination precluding GTE from reserving space for its own future needs is squarely at odds with the plain meaning of § 224(f)(1), which applies the nondiscrimination requirement only to those for whom access must be "provided," not to the owner, whose "access" is synonymous with its ownership right. It is GTE's belief that the lack of ability to reserve space coupled with the existing access rate requirements effect a "taking" of GTE's property in violation of the Fifth Amendment of the U.S. Constitution.

MCI Position. MCI does not dispute GTE's ownership rights. MCI is willing to pay a fair rent for the occupation of these structures, but GTE must make conduits, pole attachments, and rights-of-way available to MCI on a basis that is at least equal to that which GTE provides for itself. GTE discriminates when it reserves capacity for its own use to the exclusion of others.

Arbitrator's Decision. MCI's position is adopted by the arbitrator.

Discussion. Section 224(f)(1) of the Act requires nondiscriminatory treatment of all providers of such services and does not contain an exception for the benefit of such a provider on account of its ownership or control of the facility or right-of-way. The FCC stated that permitting an incumbent LEC to reserve space for local exchange service, to the detriment of a would-be entrant into the local exchange business, would favor the future needs of the ILEC over the current needs of the new LEC. *FCC Interconnection Order,* ¶ 1170. Section 224(f)(1) prohibits such discrimination among telecommunications carriers.

ISSUE NO. 78: Expanding Capacity for Poles, Ducts, Conduits and ROW

Statement of Issue. Is GTE required to make additional capacity available to MCI for poles, ducts, conduits and rights-of-ways if it does not have spare capacity and, if so, in what time frame should GTE make such capacity available?

GTE Position. Nothing in the Act requires GTE to serve the role of a subcontractor or property agent. An ILEC does not have to purchase additional pathway facilities in order to respond to an attachment request. GTE will determine the timing of adding capacity to its facilities based on GTE's growth needs. Once it has been determined that additional capacity is required, GTE will factor in forecasts in planning how much capacity should be added. GTE should not be required to procure or make available additional space where GTE's existing space is insufficient to accommodate a request for attachment.

MCI Position GTE should provide access to poles, ducts, conduits and rights-of-ways on a nondiscriminatory basis. GTE should be responsible for augmenting facilities for both its own needs and new entrants' needs if capacity constraints are in existence. Constraints on poles and conduits do not necessarily mean the underlying rights-of-way are at capacity.

Arbitrator's Decision. GTE should take all reasonable steps to expand capacity before denying access.

Discussion. The FCC has identified a variety of expansion options which reduce the burden of expanding capacity. *FCC Interconnection Order,* ¶ 1161. In ¶ 1162, the FCC concluded that the parity requirements of Section 224(f)(1) prevent utilities from automatically denying access for lack of capacity. In ¶ 1163, the FCC concluded that a utility must take all reasonable steps to expand capacity before denying access.

L. CONTRACT ISSUES (Issue Nos. 79-83)

ISSUE NO. 79: Term of the Agreement

Statement of Issue. What should the term of the Agreement be?

GTE Position. The Agreement should extend for two years, at most. Given the unprecedented nature of the Act and its requirements a two-year term is appropriate, because the parties can negotiate new or different terms and conditions based upon experience. Shorter term agreements are pro-competitive, especially in a rapidly changing market.

MCI Position. MCI's contract provides that the Agreement will continue for a term of three years, and that renewal is available for successive one-year terms at MCI's option upon written notice to GTE.

Arbitrator's Decision. GTE's position is adopted by the arbitrator.

Discussion. While it is as likely that the terms and conditions of long term interconnection will be litigated for two years as it is that a pro-competitive market will develop in that time frame, MCI seeks too great an advantage by proposing indefinite unilateral one-year options in its favor.

ISSUE NO. 80: Dispute Resolution Procedure

Statement of Issue. Should the Agreement provide for an accelerated dispute resolution procedure in case of "service affecting" disputes?

GTE Position. GTE's Interconnection agreement provides for negotiation between the parties to resolve disputes, allows for mediation, and refers unresolved disputes to binding arbitration for resolution. Insofar as resold and other tariffed services are concerned, MCI has available to it normal company and Commission dispute resolution procedures. In addition, GTE's contract dispute resolution provisions adequately protect the interests of the parties in obtaining prompt resolution of problems, while avoiding costly and time consuming litigation. MCI's proposals for dispute resolution, with its punitive liquidated damages-like provisions, encourages litigation.

MCI Position. Some disagreements between the parties are bound to occur. The parties should agree that any dispute arising out of or relating to the Agreement that the parties cannot themselves resolve, may be submitted to the Commission for resolution. MCI's proposed dispute resolution provision provides that the Commission shall have continuing jurisdiction to implement and enforce all terms and conditions. The parties should also agree to seek expedited resolution, and MCI requests that resolution occur in no event later than sixty (60) days from the date of

submission of such dispute.

Arbitrator's Decision. GTE's position is adopted by the arbitrator.

Discussion. GTE's position does not preclude consensual submission of issues to the Commission for alternative dispute resolution. The terms of the GTE proposal allow the parties greater flexibility in choosing an appropriate forum to resolve their disputes.

ISSUE NO. 81: Most Favored Nations ("MFN") Clause

Statement of Issue. Should the Agreement provide for a Most Favored Nations clause?

GTE Position. Each agreement negotiated is a process of give and take. A party desiring to obtain the terms of another agreement must abide by the entire agreement. The FCC's "most favored nations" provision, § 51.809, has been stayed; it must be given no effect by this arbitration.

One of the principal purposes of the Act is to encourage parties to negotiate interconnection agreements. If the agreement included a Most Favored Nations (MFN) clause, then the parties would have little to no incentive to negotiate, thereby frustrating one of the principal purposes of the Act. Contract negotiations involve one party "giving in" on one issue in return for "winning" on another, perhaps wholly unrelated issue. The end result, however, is satisfactory to both parties. An MFN clause would negate this contracting process for pending and future negotiations

MCI Position. MCI must have the ability to obtain more favorable terms for individual services, network elements, and interconnection when GTE offers those to others. 47 USC § 252(i) refers to the making available of "any interconnection, service, or network element provided under an agreement ..." The use of that phrase rather than using the term "agreement" supports the interpretation that Section 252(i) provides for adoption of specific terms and not agreements in their entirety. It seems unlikely that Congress intended that the arbitration process would result in a patchwork of rates, terms, and conditions that would give some carriers advantages in some areas and other carriers advantages in other areas.

Arbitrator's Decision. Neither position of the parties is adopted by the arbitrator.

Discussion. The record in this case is clear that the major purpose of the MFN provision proposed here is to enable the parties to pick and choose from the most favorable *pricing* terms and conditions contained in other agreements. The record is devoid of any evidence that either party made concessions or trade-offs between infrastructure and pricing terms and conditions during the course of their negotiations. There was little, if any, resolution of pricing terms and conditions between the parties, and there has been no discernable compromise of the pricing and costing positions of the parties over the course of the proceeding. This arbitrator believes that the provisions of 252(i) were intended as a quasi-tariff process, replacing traditional regulatory agency oversight with market forces.

Nevertheless, it would be inappropriate for the arbitrator to interject that interpretation into the Agreement between the parties. Section 252(i) states:

> A local exchange carrier shall make available any interconnection, service, or network element provided under an agreement approved under this section to which it is a party to any other requesting telecommunications carrier upon the same terms and conditions as those provided in the agreement.

While the arbitrator is partial to the interpretation of the statute espoused by MCI, the exercise of statutory rights pursuant to § 252(i) does not arise until subsequent to the approval of an agreement by the Commission in accordance with § 252(e). Although MCI's heart may be in the right place, it would be unwise for the arbitrator to usurp the authority of the Commissioners by prospectively interpreting the Act. It should be noted that the Eighth Circuit Court of Appeals has stayed the FCC rule arising out of the FCC's interpretation of the Act; however, implementation of Section 252(i) of the Act itself is not stayed. The rights which are established in § 252(i) are independent from the Agreement between the parties, and they are subject to exercise by the parties when they ripen, absent an express waiver.

ISSUE NO. 82: Bona Fide Request ("BFR") Process

Statement of Issue. Should the Agreement provide for a Bona Fide Request Process?

GTE Position. GTE’s Proposed Contract currently provides for a Bona Fide Request Process that can be used for subloop unbundling. GTE is currently discussing other applications of such a process to other services, and believes that a number of MCI’s long term operational requests could be accommodated with a Bona Fide Request Process and be removed from this arbitration proceeding. Attempting to set contract language for every eventuality at this time obviously involves speculation, and the parties are unlikely to arrive at the correct approach and verbiage.

MCI Position. The parties have reached an agreement in principle on this issue. MCI's contract language should be adopted because it contains the appropriate level of detail to permit implementation and avoid future disputes.

Arbitrator's Decision. The arbitrator instructs the parties to make the BFR Process contract language consistent with the arbitrator's substantive decisions on the issues where the BFR Process is expressly directed to be implemented.

ISSUE NO. 83: Financial Responsibility for Fraud and Errors

Statement of Issue. Who should be required to accept financial responsibility for uncollectible and/or unbillable revenues resulting from work errors, software alterations, or unauthorized attachments to local loop facilities?

GTE Position When GTE makes its network or services available to CLEC's, it will apply the same standards of care that it applies to itself for the provision of service to its own retail customers. GTE should not be required to insure collection of all revenues lost as a result of alleged failures in the GTE network or systems. The rates and cost studies presented by GTE do not include the cost of insuring against MCI's risk of doing business. GTE's current tariff provisions giving credit for service interruptions should continue to govern its relations with other carriers.

MCI Position. GTE should be required to accept responsibility for its actions or lack of actions by accepting financial responsibility for uncollectible or unbillable revenues caused by GTE work errors, accidental or malicious alterations of software, or unauthorized attachments to local loop facilities.

Arbitrator's Decision. GTE's position is adopted by the arbitrator.

Discussion. GTE's current tariff provisions giving credit for service interruptions arise in the interexchange market. There is no compelling rationale in the record to support the proposition that the local exchange market should be treated differently.

III. IMPLEMENTATION SCHEDULE

Pursuant to 47 USC § 252(c)(3), the arbitrator is to "provide a schedule for implementation of the terms and conditions by the parties to the agreement." In this case the parties did not submit specific alternative implementation schedules. Specific contract provisions, however, contain implementation timelines. The parties shall implement the agreement pursuant to the schedule provided for in the contract provisions, and in accordance with the 1996 Act, the applicable FCC rules, and the orders of this Commission.

In preparing a contract for submission to the Commission for approval, the parties may include an implementation schedule.

IV. CONCLUSION

The foregoing resolution of the disputed issues in this matter meets the requirements of 47 USC § 252(c).

The parties are directed to submit an agreement consistent with the terms of this report to the Commission for approval within 30 days, pursuant to the following requirements of the Interpretive and Policy Statement:[13]

Filing and Service of Agreements for Approval

1. An interconnection agreement shall be submitted to the Commission for approval under Section 252(e) within 30 days after the issuance of the Arbitrators's Report, in the case of arbitrated agreements, or, in the case of negotiated agreements, within 30 days after the execution of the agreement. The 30 day deadline may be extended by the Commission for good cause. The Commission does not interpret the 9 month time line for arbitration under Section 252(b)(4)(C) as including the approval process.

2. Requests for approval shall be filed with the Secretary of the Commission in the manner provided for in WAC 480-09-120. In addition, the request for approval shall be served on all parties who have requested service (List available from the Commission Records Center. See Section II.A.2 of the Interpretive and Policy Statement) by delivery on the day of filing. The service rules of the Commission set forth in WAC 480-09-120 and 420 apply except as modified in this interpretive order or by the Commission or arbitrator. Unless filed jointly by all parties, the request for approval and any accompanying materials should be served on the other signatories by delivery on the day of filing.

3. A request for approval shall include the documentation set out in this paragraph. The materials can be filed jointly or separately by the parties to the agreement, but should all be filed by the 30 day deadline set out in paragraph 1 above.

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[13] *In the Matter of Implementation of Certain Provisions of the Telecommunications Act of 1996*, Docket No. UT-960269, Interpretive and Policy Statement Regarding Negotiation, Mediation, Arbitration, and Approval of Agreements Under the Telecommunications Act of 1996 (June 27, 1996)("Interpretive and Policy Statement").

Negotiated Agreements

a. A "request for approval" in the form of a brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to whether the agreement should be adopted or modified, including a statement as to why the agreement does not discriminate against non-party carriers, is consistent with the public interest, convenience, and necessity, and is consistent with applicable state law requirements, including Commission interconnection orders.

b. A complete copy of the signed agreement, including any attachments or appendices.

c. A proposed form of order containing findings and conclusions.

Arbitrated Agreements

a. A "request for approval" in the form of a brief or memorandum summarizing the main provisions of the agreement, setting forth the party's position as to whether the agreement should be adopted or modified; and containing a separate explanation of the manner in which the agreement meets each of the applicable specific requirements of Sections 251 and 252, including the FCC regulations thereunder, and applicable state requirements, including Commission interconnection orders. The "request for approval" brief may reference or incorporate previously filed briefs or memoranda. Copies should be attached to the extent necessary for the convenience of the Commission.

b. A complete copy of the signed agreement, including any attachments or appendices.

c. Complete and specific information to enable the Commission to make the determinations required by Section 252(d) regarding pricing standards, including but not limited to supporting information for (1) the cost basis for rates for interconnection and network elements and the profit component of the proposed rate. (2) transport and termination charges; and (3) wholesale prices.

d. A proposed form of order containing findings and conclusions.

Combination Agreements (Arbitrated/Negotiated)

a. Any agreement containing both arbitrated and negotiated provisions shall include the foregoing materials as appropriate, depending on whether a provision is negotiated or arbitrated. The memorandum should clearly identify which sections were negotiated and which arbitrated.

b. A proposed form of order is required, as above.

4. Any filing not containing the required materials will be rejected and must be refiled when complete. The statutory time lines will be deemed not to begin until a request has been properly filed.

Confidentiality

1. Requests for approval and accompanying documentation are subject to the Washington public disclosure law, including the availability of protective orders. The Commission interprets 47 USC § 252(h) to require that the entire agreement approved by the Commission must be made available for public inspection and copying. For this reason, the Commission will ordinarily expect that proposed agreements submitted with a request for approval will not be entitled to confidential treatment.

2. If a party or parties wishes protection for appendices or other materials accompanying a request for approval, the party shall obtain a resolution of the confidentiality issues, including a request for a protective order and the necessary signatures (Exhibits A or B to standard protective order) prior to filing the request for approval itself with the Commission.

Approval Procedure

1. The request will be assigned to the Commission Staff for review and presentation of a recommendation at the Commission public meeting. The Commission does not interpret the approval process as an adjudicative proceeding under the Washington Administrative Procedure Act. Staff who participated in the mediation process for the agreement will not be assigned to review the agreement.

2. Any person wishing to comment on the request for approval may do so by filing written comments with the Commission no later than 10 days after date of request for approval. Comments shall be served on all parties to the agreement under review. Parties to the agreement file written responses to comments within 7 days of service.

3. The request for approval will be considered at a public meeting of the Commission. Any person may appear at the public meeting to comment on the request for approval. The Commission may in its discretion set the matter for consideration at a special public meeting.

4. The Commission will enter an order, containing findings and conclusions, approving or rejecting the interconnection agreement within 30 days of request for approval in the case of arbitrated agreements, or within 90 days in the case of negotiated agreements. Agreements containing both arbitrated and negotiated provisions will be treated as arbitrated agreements subject to the 30 day approval deadline specified in the Act.

Fees and Costs

1. Each party shall be responsible for bearing its own fees and costs. Each party shall pay any fees imposed by Commission rule or statute.

DATED at Olympia, Washington and effective this 3rd day of December 1996.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

LARRY BERG
Arbitrator